PART IV

Section 1-C

GENERAL STATUTORY RULES AND STATUTORY ORDERS ISSUED BY THE CENTRAL GOVERNMENT AND ORDERS MADE BY THE PRESIDENT AND REPUBLISHED BY THE STATE GOVERNMENT.

ELECTION COMMISSION OF INDIA

ASHOKA ROAD,
NEW DELHI-1.
Dated the 3rd October, 1976.

NOTIFICATION

No. 82/KT-LC/1/74.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes order dated 22nd September, 1976 of the High Court of Karnataka at Bangalore in Election Petition No. 1 of 1974.

By Order,

V. NAGASUBRAMANIAN,
Secretary to the Election Commission of India.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated the 22nd Day of September, 1976

Before

The Hon'ble Mr. Justice K. BHIMIAH

Election Petition No. 1 of 1974

Between:

Manikrao Patil, son of Shamarao Patil, aged about 39 years, residing at Thana Kushnoor, Taluk Aurad, District Bidar. **Petitioner**

(By Smt. S. Pramila)

And:

1. Returning Officer for the Bidar Local Authority Constituency, Karnataka Legislative Council and Deputy Commissioner, Bidar District, Bidar.
2. Narendra Madivulappa Kheni, son of Madivulappa Kheni, aged about 38 years, residing at Ranjal. Taluk Bidar, District Bidar.
3. Chandrakanth Gurupadappa, son of Gurupadappa, aged about 38 years, residing at Bidar.
4. Dayanand Jayanand Rao Dalaji son of Dalaoji, aged about 35 years, residing at Bhahganj, Barijanawada, Bidar. **Respondents**

(By Sri K. S. Puttaswamy, I Additional Government Advocate for Respondent, No. 1 ; Sri K. R. D. Karanth, for Respondent No. 2 and Respondent Nos. 3 and 4, served, absent and unrepresented).

Election Petition filed by the Petitioner under Section 81 of the Representation of the People Act, 1951 Act No. 13/1951 challenging the election of the Respondent No. 2 to the Karnataka Legislative Council from Bidar Local Authority Constituency in the General Elections held in May 1974 and seeking an order that (a) the entire records be called for including ballot papers from Respondent No. 1 ; (b) the election of Respondent No. 2 be declared as void after making a check and re-count of the ballot papers, (c) it be further declared that the petitioner has instead been duly elected and (d) for such other consequential reliefs and (e) for costs.

This Election Petition coming on for trial on 17-3-75, 18-3-75, 19-3-75, 20-3-75, 11-6-75, 16-6-75, 27-8-75, 28-8-75, 29-8-75, 17-9-75, 18-9-75, 19-9-75, 22-9-75, 23-9-75, 24-9-75, in the presence of Smt. S. Pramila, Advocate for the Petitioner and Shri K. S. Muthuswamy I Additional Government Advocate and Advocate for Respondent No. 1, Sri K. R. D. Karanth, Advocate for Respondent No. 2 and Respondent Nos. 3 and 4 are served, absent and unrepresented and this Election Petititon having stood over for consideration, the Court made the following order this 22nd day of September 1976.

ORDER

Bhimiah, J.

In this Election petition, the petitioner calls in question the election of the 2nd respondent to the Legislative Council of Karnataka from the Local Authorities Constituency of Bidar District, held on May 12, 1974.

2. The petitioner and respondents 2 to 4 were candidates for the election from the Local Authorities Constituency of Bidar. The petitioner and 2nd respondent were the only contesting candidate. The 2nd respondent obtained sixty-four votes and the petitioner obtained fifty-four votes. As the 2nd respondent obtained largest number of votes, he was declared elected on May 12, 1974 to fill the seat in the Legislative Council of Karnataka. The petitioner has challenged the 2nd respondent's election to the Legislative Council. The petitioner has pleaded that the 1st respondent who is the returning officer, conducted the election in violation of Article 171 (2) (a) of the constitution of India and Section 27 (2) (a) of the Representation of the People Act, 1950 (to be hereinafter called the R.P. Act of 1950) and the voters list had not been prepared in accordance with the provisions of Article 173 (3) of the Constitution and section 27 (2) of the R.P. Act of 1950.

3. He has stated that in Bidar Local Authority Constituency by a notice of election' issued under from "Notice of Election" under Rule 3 of Election Rules, 1961 (to be hereinafter refered to as the 'Rules') dated 10th April 1964 nominations were called for giving calender of events specifying the last date for filing nominations as not later than 17th April, 1974 between 11-00 a.m. and 3-00 p.m. On 17th April 1974 the last date fixed for nomination, voters list was supplied to the candidates and others. It comprised of the voters list of six town municipal councils, viz., Bidar, Bhalki, Chitaguppa Humnabad, Basavakalyan and Ourad and the list showed in the column voters 'Nil' except Ourad. Similarly out of five Taluk Development Boards, the members of Ourad, Bhalki, Humnabad and Basavakalyan were included in the printed voters list. The voters list pertaining to Bidar Taluk Development Board was shown as 'Nil' voters in voters' column. The total electorate of the local authority constituency of Bidar District consisted of 218 voters. The voters list published and supplied disclosed only 107 voters which number was less than half the electorate, which according to the petitioner is in violation of the provisions of Article 171 of the Constitution and Section 27 (2) of the R.P. Act of 1950. The election held in the absence of electorate from five Municipalities according to the petitioner is in derogation of Article 171 (2) of the Constitution and Section 27 (2) of the R.P. Act of 1950.

4. Further the petitioner has stated that the General Election to constitute the Bidar Taluk Board was held in December 1968 and the term of office of the members was for a period of four years

under Section 8 of the Village Panchayat and Local Boards Act of 1959 (to be hereinafter referred to as the 'Act') and the term of office of the members of Bidar T.D.B. expired on 3rd December 1972 and it was never constituted even after the election in 1968. By a Notofication dated 14th November 1972 the Divisional Commissioner, Gulbarga, in exercise of the powers conferred in him under the Act, extended the term of the existing members of the Taluk Development Board in Bidar District, except the Bidar Taluk Development Board. In the meanwhile, the Governor of Karnataka gave an assent to the promulgation of the Karnataka Village and Taluk Development Board (Postponement of Election) Act, 1974 (to be hereinafter referred to as the 'Postpnoement of election Act'), by which the term of office of the members of the Taluk Board or of the Administrator appointed under the Act, who are in office from the date of commencement of the said Postponement of Election Act, was extended. The Administrator of the Taluk Development Board, Bidar, was appointed in 1969 November and his term of office was extended from time to time and lastely by a Notification dated 2nd March 1974, his term was extended upto and inclusive of December, 1974, with effect from 22nd November 1973. The petitione's case is that when the Postponement of Election Act of 1974 came into force the Administrator of the Taluk Development Board, who was in office was deemed to have continued during the period of the Postponement of Election Act, was in force and there were no elected members of the Taluk Development Board, Bidar, to exercise franchise in the Local Authority Constituency. Bidar and, therefore according to the petitioner the Returning Officer had shown against the colum of voters as 'Nil' in the Voters list of Bidar Taluk Development Board, which was supplied to the intending candidates and others on 17th April 1974. The petitioner has alleged that after the last date of nomination i.e., 17th April 1974, the 1st respondent added the names of the alleged members of the Taluk Development Board, Bidar, to the list of voters by including their names in the Electoral Roll by anti-dating additional list of voters as on 17th April 1974. His further allegation is that the 2nd respondent being a very powerful and influential person in the Government took the assistance of the 1st respondent and other Government officials and got the names of 16 members of the Taluk Development Board, Bidar, included after the last date of nomination i.e., 17th April 1974. The petitioner's case is that as on 17th April 1974 and 18th April 1974 or for that matter on 25th April 1974 the voters list including the names of the voters or the Taluk Development Board, Bidar, was not in existance and the 2nd respondent got it included in collusion with the 1st respondent. He has alleged that the 2nd respondent was an accused in a criminal case pending before the Judicial Magistrate, Bidar, and he got his name deleted from the P.I.R. and the Charge-sheet by an order of the Government by wielding influence. He has further alleged

that the 2nd respondent by exercising undue influence on the subordinates of the Government, managed to get the notification issued by the Divisional Commissioner, Gulbarga, dated 17th April 1974 extending the term of office of eleven members of the Taluk Development Board, Bidar and managed to get it published in the Extraordinary Gazette dated 17th April 1974. He has alleged that the 2nd respondent, further managed to get another Notification, under Section 107 of the Act, notifying his name and that of one Viswanathappa as duly elected to the Taluk Development Board, Bidar. His specific case is that the 16 members of the Taluk Development Board, Bidar, whose names were included in the additional voters list in question were not entitled to inclusion of their names in the voters list upto and inclusive of the date 17th April 1974 and inclusion of their names in the electoral rolls is contrary to law governing the matter and receiption of those votes was improper and they must be considered as thrown-away votes.

5. The petitioner has finally alleged that the 2nd respondent is guilty of obtaining or procuring assistance for the furtherance of the prospects of his election from the 1st respondent, the Divisional Commissioner, Gulbarga and other gazetted officers of Government who are in the service of the Government which amounted to corrupt practice and the election of the 2nd respondent should be declared as void under Section 100 (b) (d) sub-clauses (2), (3) and (4) of the R.P. Act, 1951. Therefore, the prayer of the petitioner is that the election of the 2nd respondent should be declared as void and further sought for a declaration that he is duly elected under Section 10 (I) (a) and (b) of the R.P. Act, 1951.

6. The 2nd respondent filed his written statement. He has denied all the allegations in the petition and inter alia pleaded that the election was conducted by the 1st respondent in accordance with law and the same is not liable to be interferred with. He has asserted that the voters list which was furnished to him on 17th April 1974 was inclusive of the supplemental list of Bidar Taluk Development Board and the same was furnished with the supplemental list to those that had applied for the voters list on 17th April 1974 and also on subsequent dates. He has stated, with reference to the voters list pertaining to Bidar Taluk Development Board that the entry shown as 'Nil' is not correct as the voters list was amended and supplemented on 17th April 1974 by inclusion of 16 members in the Taluk Development Board, Bidar, in the voters list and hence, after the amendment the list pertaining to Bidar Taluk Development Board ceased to be nil. He has denied the allegations of influence and connivence referred to in para 15 of the petition as patently false. He has alleged that the petitioner being the Bidar District Congress (O) President, might have been himself responsible for the issue of the Notification and that he has now sought to make it a ground for challenge, having failed in the election. His specific case with regard to voters of Bidar Taluk Development Board is that

the constitution of the Bidar Taluk Development Board was delayed due to the pendency of writ petitions filed in the High Court and the orders made therein. He has submitted that even though the term of the members had expired the same had been extended by the State Government and hence, they were registered as voters and they had been so included in the list of voters and that the petitioner cannot challenge the extention of the term to the members of the Taluk Development Board, as the same had been done under an enactment of the State Legislature. In any event, if the contention of the petitioner is to be unheld his election is not liable to be set aside as the votes cast by the aforesaid members in favour of the petitioner are also liable to be rejected as being void votes. He has denied the allegation that the voters list was antidated as 17th April 1974. He has contended that as no particulars of his being powerful or influential is given and such a general statement cannot be the subject matter of enquiry. He has stated that he was elected to the State Legislature in 1968 as an independent candidate and when there was split in the congress party in 1969 he joined Congress (R) which was an opposition party in the State. He has denied that he exercised any undue influence on the Government and the subordinates of the Government and got issued the Notifications dated 17th April 1974 and the Notifications have been issued in exercise of the powers vested in the Commissioner. He has pleaded that the allegations of undue influence are vague as no names of persons on whom under influence was exercised has been stated in the petition and therefore, those allegations do not constitute corrupt practice within the meaning of Section 123 (7) of the Act of 1951. Further, in view of the vague allegations made without giving any particulars, the said allegations in para 23 cannot be looked into and are liable to be struck off. He has asserted that the term of office of the members of Bidar Taluk Development Board was validly extended and the names of the members were validly included in the list of voters. He has specifically denied the marking of the ballot papers by different colour pencils other than those placed in the Booth. He has challenged the five votes which have been counted in favour of the petitioner as invalid. One of the votes counted for the petitioner bore numerical number, by which it was possible to identify voter concerned and that the mark which was put on the ballot paper was not a numerical figure either in the international form of the Indian numericals or in the Roman or in any other form, but it was a horizontal line and it should be treated as invalid. He has asked for recounting of votes. He has pleaded that this his election is not liable to be interfered with or set aside for any or of all the reasons mentioned in the petition and the provisions of Section 123 (2) and (7) of the Act of 1951 cannot be applied to the instant case. He has asserted that no corrupt practice has been committed by him and that the petitioner has not given the full particulars of the corrupt practices alleged by him, which on a closer scrutiny would be found to be no corrupt

practice under the R.P. Act. There has been no violation of the provisions of the Constitution, Act of 1950 or 1951 and the Conduct of Election Rules. He has further submitted that the voters list prepared and maintained under the Act of 1950 is not liable to be challenged under Section 30 of the said Act, which bare any person from disputing the correctness or legality of the electoral roll prepared.

7. Second respondent has filed a recrimination petition under Section 97 of the Act of 1951, of his intention to plead and give evidence that the election of the petitioner would have been void, had he been returned candidate and that the result of the election would not be materially affected if a proper recount of the valid votescast in favour of both the candidates was taken. Therefore he prayed that his election be upheld and the petition be dismissed.

8. The 1st respondent who is the Returning Officer has filed the written statement.

9. It may be stated that one Mr. Sangappa was the Returning Officer, who conducted the election to the Legislative Council from the local authority constituency, Bidar. He was also the Electoral Registration Officer. But the written-statement filed on behalf of the 1st respondent is verified and signed by one Mr. Puttaswamy Gowda, Deputy Commissioner of Bidar.

10. The 1st respondent has stated that the plea that the inclusion of the members of the Town Municipal Council, Ourad and the members of the Taluk Development Board, Bidar, in the final Electoral Roll is improper or illegal is unfounded. He has stated that the question whether the electoral roll finally published is illegal, invalid, or improper, cannot be gone into in an election petition challenging the validity of the election of the respondent. According to him the question of legality or the validity of the electoral roll is wholly outside the purview of the election petition calling in question the election of the 2nd respondent. He has specifically denied the allegations that the voters list as on 17th April 1974 did not include the members of the Taluk Development Board, Bidar as voter. His case is that the Government by their Notification No. DPC 5 BAD 74, dated 17th April 1974 determined the period of appointment of the administrator of the Taluk Development Board, Bidar to the end of 16th April 1974 and thereafter the Divisional Commissioner by his Notification dated 17th April 1974 extended the term of the elected members of the Taluk Development Board, Bidar, and by reason of the said extension they were entitled to be included as voters in the electoral roll and they were so included in the supplemntal lectoral roll issued on 17th April 1974. He has denied the allegations with reference to the inclusion of the members of the Municipal Council and the said ground is misconceived and untenable. He has also denied the allegation that the 2nd respondent with his influence canvassed the

officers in the administration of the State, has managed to get the Notification issued curtailing the term of office of the Administrator and extending the term of the members of the Taluk Development Board, Bidar and the Municipal Councillors, He has denied that the inclusion of the members of the Taluk Development Board, Bidar and the Municipal Councillors, Ourad, is subsequent to 17th April 1974 and the inclusion in that regard has been antidated according to him is utterly false, frivolous and mischievous. He has denied the allegation that the marking on the ballot papers are not made by the Red and Blue pencils supplied at the time of recording votes. Therefore, he has prayed that the Court may be pleased to dismiss the petittion with costs.

11. The petitioner has filed objections to the recrimination petition filed under Section 97 (1) of the R.P. Act of 1951 and has contended that the petitioner had not secured any invalid or void votes as averred in the recrimination petition and those votes are not liable to be excluded and that the 2nd respondent is also not entitled to recount in the manner sought for in the recrimination petition. He has also denied all the allegations in the written-statement filed by the 1st respondent. He has asserted that the horizontal line found in one of the ballot papers which was counted in favour of the petitioner represented the Indian numerical figure. He has denied that the Notification dated 17th April 1974 curtailing the period of administrator of the Taluk Development Board, Bidar was not printed and published in the gazette on 17th April 1974 and that the administrator never handedover charge to anybody, and, therefore, the administrator continued till the extended period was over. He has asserted that the Taluk Development Board, Bidar, was not in existence with the members and that they were not competent to vote.

12. Upon these pleadings the following issues were framed by my learned brother Chandrashekar, J. who tried the election petition till the stage of recording the evidence.

ISSUES

(1) Were the electoral rolls of Bidar District Local Authorities Constituency for Karnataka State Legislative Council, not in conformity with Article 171(3) of the Constitution and Section 27(2) of the Representation of the People Act, 1950, on account of the absence therein in the names of the members of five of the six Town Municipal Councils in Bidar District, which had not been reconstituted ?

(2) Whether the names of the purported members of the Taluk Development Board, Bidar Taluk, were included in the aforesaid electoral rolls after 17th April 1974 as pleaded by the petitioner or on 17th April 1974 as pleaded by the respondents 1 and 27 ?

(3) Even if the names of the purported members of the Taluk Development Board, Bidar Taluk, had been included in the aforesaid electoral rolls on 17th April 1974, whether they were entitled to vote, whether the votes given by any of them could be regarded as valid votes in counting, has affected the result of the election ?

(4) Whether the validity of inclusion or exclusion of any votes in the aforesaid electoral rolls, can be gone into in this Election Petition ?

(5) Was the notice given by the respondent-2 of his intention to give evidence by way of recrimination, within or beyond the time prescribed by the proviso to sub-section (1) of Section 97 of the Representation of People Act, 1951 ?

(6) Was the inclusion of the names of the members of the Town Municipal Council, Aurad, in the aforesaid electoral rolls, invalid as pleaded by respondent-2 and whether the votes given for determining the result of the election ?

(7) Whether one ballot paper which did not contain a proper mark to indicate the intention of the voter, had been counted in favour of the petitioner and whether such vote should be excluded ?

(8) Whether all or any of the aforesaid illegalities and irregularities pleaded by the parties, even if proved, have materially affected the result of the election ?

13. In the course of the arguments the following additional issue were framed by consent of both the parties.

ADDITIONAL ISSUE

(1) Whether the petitioner proves that the 2nd respondent sevured the petitioner entitled to a declaration as duly elected ?

(2) In the event of the Court holding that the reception of 16 votes cast by the members of the Bidar T.D.B. are void and invalid, whether the 2nd respondent is entitled for recount and declaration as duly elected.

(**Vide** Order dated 27th October 1975)

Further the following two additional issues were framed; for the reasons set out in the order dated 17th February 1976.

(1) Whether the petitioner proves that the 2nd respondent secured the assistance of the 1st respondent and other persons in the service of the Government by undue influence in getting the voters list of Taluk Board Bidar published after 17th April 1974 in furtherance of his election prospects and whether it amounted to corrupt practice of undue influence materially affecting the result of the case;

(2) Whether the 2nd respondent proves that the allegations in the petition are general and vague and lacked any material particulars and, therefore, do not constitute corrupt practice within the meaning of Section 123(7) of the Representation of the People Act of 1951.

14. The Petitioner in support of his case has examined 13 witnesses including himself and 74 exhibits were marked on his behalf. On behalf of the 1st respondent two R.Ws. were examined and they are the Returning Officer Mr. Sangappa and the Assistant Returning Officer Mr. Basavannachar.

15. The 2nd respondent examined himself as R.W. 1 and closed his side. In all 24 Exhibits were marked on behalf of the respondents. One Exhibit was marked as Court Exhibit.

16. The 2nd respondent in the course of the trial did not press for determination of issue No. 6 relating to the validity of the nominations of the members of Ourad Town Municipality in the voters by a Memo on 20th March 1975. The Memo is allowed. The 6th issue does not survive for determination.

17. Issue No. 1, which reads thus:

"(1) Were the electoral rolls of Bidar District Local Authorities Constituency for Karnataka State Legislative Council, not in conformity with Article 171(3) of the Constitution and Section 27(2) of the Representation of the People Act, 1950, on account of the absence therein of the names of the members of the five of the six Town Municipal Councils in Bidar District, which had not been reconstituted ?

The petitioner's plea in so far as this issue is concerned is that the Local Authorities Constituency of Bidar consisted of the members of five Municipal Councils and five Taluk Development Boards viz., Bidar, Bhalki, Chitaguppa, Humnabad, Basavakalyan and Ourad. The voters list of five Municipal Councils showed 'Nil' voters except Ourad. Similarly the Voters list of T.D.B. showed 'Nil' voters for T.D.B. Bidar. Further, his plea is that while total number of voters in the electoral rolls of Bidar Local Authority Constituency consisted of 218 voters, the list published by the 1st respondent showed only 107 voters which was less than half the number of voters in the electoral roll. Therefore, according to the petitioner the conduct of the election in question in the absence of more than half the number of voters is in derogation of the provisions of Article 171 (3) (a) of the Constitution and under Section 27 (2) (a) of the R.P. Act of 1950. Article 171 (3) (a) reads thus:

"The total number of members of the Legislative Council of a State as nearly as may be one-third shall be elected by electorates consisting of the members of the Municipalities, District Boards and such other local authorities in the State as Parliament may fix".

Further, Section 27 (2) (a) and (b) of the R.P. Act of 1950 reads thus:

"That for the purpose of elections to the legislative council of a State in any local authority constituency.

(a) the electorate shall consist of members of such local authorities exercising jurisdiction in any place or area within the limits of that constituency as are specified in relation to that State in the Fourth Schedule;

(b) every member of each such local authority within a local authorities' constituency shall be entitled to be registered in the electoral roll for that constituency;"

From the reading of the Article 171, it is clear that there are various electorates in Local Authority Constituency for the election of members to the Legislative Council of the State. The electorates in the instant case consisted of Municipal Councils and Taluk Development Board of Bidar District.

18. Article 171 (3) (a) of the Constitution says that the members in the Legislative Council shall be elected by electorate consisting of members of Municipalities, District Boards and such other local

authorities constituencies in the State as Parliament may by law specify. Section 27, says that the electorate shall consist of members of local authorities exercising jurisdiction in any place or area within the limits of that constituency and every member of each such local authority within the local authorities constituency shall be entitled to be registered in the electoral roll for that constituency.

19. Upon a reading of these provisions, it is clear that members of the Legislative Council shall be elected by member of the electorate consisting of members of the local authorities exercising jurisdiction in any places or area within the limits of the constituency and every such member shall be entitled to be registered as voters in the electoral rolls. These provisions do not say that if any Municipal Council or Taluk Development Board is not constituted in the Local Authorities Constituencies, the election for that constituency shall not be held. Nor do they say that there should be majority of members enlisted in the electoral rolls before the election is conducted in that constituency.

20. Upon a careful consideration of the above quoted provisions, it is not possible to construe those provisions, to mean that, an election conducted without constituting majority of the local bodies and without enlisting majority of the members as voters in the electoral roll in that constituency is in derogation of provisions of Article 171 (3) (a) of the Constitution of India and Section 27 (2) (a) of the R.P. Act of 1950. Therefore, I hold the first issue in the negative.

21. Before considering the other issues in the case, it is necessary to consider the 4th issue, which reads :

" Whether the validity of inclusion or exclusion of any voters in the aforesaid electoral rolls, can be gone into in this election petition ".

22. The petitioner's case is that the 1st respondent in collusion with the 2nd respondent added the names of the members of the Taluk Development Board, Bidar, after the last date for nomination **i. e.,** 17th April 1974 and anti-dated the additional list of voters marked as Ex. R-6(a) in furtherance of election prospects of 2nd respondent. His further case is that, Ex. R-6(a) voters list relating to the members of the Bidar Taluk Development Board, was not in existence on 17th April 1974 and 18th April 1974 or for that matter till 25th July 1974.

23. The plea of the respondents is that Ex. R-6(a) was published on 17th April 1974. The evidence of R.W. 2 is to the effect that Ex. R-6 (a) was published on 17th April 1976 at 7-30 p.m. The contention of the learned Advocates for the respondents is that the validity of inclusion of the members of the Taluk Development Board, in the voters list at Ex. R-6 (6), cannot be gone into in this

inquiry in view of the decision in *Sri Shreewant Kumar Choudhary* vs. *Shri Baidyanath Panjiar* (AIR 1973 S.C. 717). Reliance is also placed upon the following decisions of the Supreme Court (1) *B. M. Ramaswami* vs. *B. M. Krishna Murthy* (A.I.R. 1963 S.C. 458) ; (2) *Kabul Singh* vs. *Kundan Singh* (A.I.R. 1970 S.C. 340) ; (3) *Pampakavi Rayappa Belagali* vs. *B. D. Jatti* (A.I.R. 1971 S.C. 1348) ; and (4) *Shri Shreewant Kumar Choudhary* vs. *Shri Baidyanath Panjiar* (A.I.R. S.C. 717). The three earlier decisions have been relied upon by Mathew, J. (as he then was) in the last cited decision. His Lordship has observed thus :

"There is no dispute here that the electoral roll in question has been validly prepared. The only question is whether the entry of the names of 31 commissioners appointed by the Minister in pursuance of his order in the electoral roll of the constituency was legal or not. That question, we think, cannot be gone into in a petition challenging the validity of the election. In otherwords, even assuming that the inclusion of the names of these persons was illegal as their appointment as commissioners of the Area Committee in question was in contravention of the provisions of the Bihar Municipality Act, it was not open to the High Court, when trying an election petition, to go behind the electoral roll and enquire into the question whether these persons were validly appointed as commissioner and the inclusion of their names in the electrol roll was legal."

In the case decided by the Supreme Court, the last date for filing nominattion was April 2, 1970 at 3-00 p.m. to the Bihar Legislative Council from Darbhanga Local Authority Constituency. The Government of Bihar published a Notification on March 27th 1970. In pursuance of which 31 new commissioner were entered in the electoral roll of the constituency. The contention of the appellant in that case was tha the Minister for Local-self Government was actuated by mala fides in passing the said order and that, committed illegality in appointing the commissioner without the previous recommendation as required by Section 13 (1) (a) of the Bihar and Orissa Municipalities Act, and therefore, the Minister committed an illegality in the matter of appointment of Commissioners and therefore, the contention was that the inclusion of those commissioners in the voters list was illegal. While considering the applicant's contention, the learned Judge has observed as quoted above.

24. In those circumstances, the Supreme Court held the validity of the electoral roll which was prepared anterior to the last date of nomination cannot be gone into in a petition challenging the validity of the election. But in the instant case the case for the petitioner as already stated is that Ex. R-6(a) was added after the last date for nominations **i.e.,** 17th April 1974. Therefore, Miss. Pramila, learned Advocate for the petitioner, contended that there is no legal bar under Section 30 of the R.P. Act of 1950 read with Section 170 of the R.P. Act of 1951 to go into and determine the question of the validity of the electoral roll. In support of her contention, she relied upon the decision in **Baidyanath Panjira vs. Sita Ram Mahto &**

others (A.I.R. 1970 S.C. 314). Hegde, J. (as he then was) observed thus, in Paragraph 7 of the judgment.

"The object behind sub-section (3) of Section 23 of the 1950 Act would be clear if we examine the scheme of the Act and the principles underlying that scheme. Part III of the 1950 Act, provides for the preparation of the electoral rolls for assembly constituencies. Section 15 provides that for every constituency, there shall be an electroal roll which shall be prepared in accordance with the provisions of the Act, under the superintendence, direction and control of the Election Commission. Section 16 enumerates what disqualification will disentitle a person from being enrolled as a voter. Section 18 provides that no person shall be entitled to be registered in the electoral roll for any constituency more than once. Section 18 enmciates the principle "one person one-vote:" Section 22 provides for correction of entires in the electoral rolls. Section 23(1) permits a person whose name is omitted from the rolls to apply for inclusion. Sub-section (2) of Section 23 authorises the electoral registration officer to include the name of the applicant in the rolls if he is satisfied that he is entitled to be registered. The object of the aforementioned provision is to see that to the extent possible, all "persons qualified to be registered as voters in any particular constituency should be duly registered and to remove from the rolls all those who are not qualified to be registered. Sub-section (3) of Section 23 is an important exception to the Rules noted earlier. It gives a mandate to the electoral registration officers not to amend, transpose or delete any entry in the electoral roll of a constituency after the last date for making nominations for election in that constituency and before the completion of that election. If there was no such prvoision, there would have been room for considerable manipulations particularly when there are only limited number of electors in a constituency. But for that provision, it would have been possible for the concerned authorities to so manipulate the electoral rolls as to advance the prospects of a particular candidate. This would be more so if either all or a section of the electors are persons nominated to local authorities. The legislative mandate like the one embodied in Section 23 (3) must be considered as mandatory not merely because of the language employed in that sub-section, but also in view of the purpose behind the provision in question. In our opinion, Clause 23 (a) takes away the power of the electoral registration officer or the chief electoral officer to correct the entires" in the electoral rolls or to include new names in the electoral rolls of a constituency after the last date for making the nominations for election in that constituency and before the completion of that election. Section 23(3) does not deal with any more or procedure in the matter of registering the voters. It interdicts the concerned officers from interfering with the electoral rolls under the prescribed circumstances. It puts a stop to the power conferred on them. Therefore, it is not a question of irregular exercise of power but a lack of power."

25. It is clear from the elucidation of the law by the Supreme Court in the above decision that Clause 23(a) takes away the power of the Electoral Registration Officer or the Chief Electoral Officer to correct the entry in the electoral rolls or to include new names in the electoral rolls of a constituency after the last date for making nominations for election in that constiuency and before he completion of the election.

26. The allegation in the petition in this case is that inclusion of 16 members of the Taluk Development Board, Bidar, was made after the last date for making nominations for election and before the completion of the election. If, any Electoral Registration Officer, interfers with the electoral rolls, which stood on the last date of

nomination it is not merely an irregularity, but it would amount to exercise of lack of power. Therefore, in the light of the elucidation of law, by the Supreme Court, as stated above and in view of the case pleaded by the petitioner that Ex. R-6(a) was published after the last date of nomination and that it was antidated, the power of this Court trying an election petition to enquire into the validity of the electoral roll is no bared and, therefore, this Court can go into and enquire into the question whether 16 of the Taluk Development Board, were validly included in Ex. R-6(a). Therefore, I hold that validity of inclusion of votes in the electoral rolls can be gone into in this election petition.

27. The next question for consideration is issue No. 2, which reads:

"Whether the names of the purported members of the Taluk Development Board, Bidar Taluk, were included in the aforesaid electoral rolls after 17th April 1974, as pleaded by the petitioner, or on 17th April 1974 as pleaded by the respondents."

28. This is the crucial issue for determination in the case. The petitioner's case is that after the last date of nomination the 1st respondent incollusion with the 2nd respondent added the names of the members of the Taluk Development Board, Bidar, as per Ex. R-6(a) to the voters list, Ex. R-6, by including the names in the electoral roll by antidating Ex. P-18 which is the draft additional voters list, which was cyclostyled and added as per Ex. R-6(a). Further, his case is that the 1st respondent manipulated the electoral rolls to advance the prospects of the election of the 2nd respondent by including the new names of the members of the Taluk Development Board, Bidar, who were not entitled to be registered as voters on 17th April 1974. The case of the 1st respondent as pleaded in the written statement is that, the allegation in the petition that as on 17th April 1974, the voters list did not include the members of the Taluk Development Board, Bidar, is totally false. By a Notification No. DP. C. 5. BAD/74, dated 17th April 1974 the Government curtailed the period of appointment of the Administrator of the Taluk Development Board, Bidar, to end on 16th April 1974 and thereafter the Divisional Commissioner, Gulbarga, by this Notification dated 17th April 1974 extended the term of the elected members of the Taluk Development Board, and by reason of the said extension, they were entitled to be included in the supplemental electoral roll issued on 17th April 1974.

29. Therefore, the question which arises for determination is whether Exhibit P-18, draft voters list and its cyclostyled copy Ex, R-6(a) the supplemental voters list was published after the last date of filing nomination as pleaded by the petitioner or the same was published on 17th April 1974 as asserted by the 1st respondent. The onus of proving this issue is heavily on the petitioner.

30. In order to establish his case the petitioner relies upon both oral and evidence of circumstances in the case.

31. Let me first consider the oral evidence on record in support of this issue.

P.W. 6 Mallikarjun Patil, a practising Advocate in Bidar has given evidence that on 17th April 1974, he obtained a copy of the voters list as per Exhibit P-28. In the voters list pertaining to Taluk Development Board, Bidar, the voters list column contained the remark 'Nil'. He remained in the office of the Deputy Commissioner till 6-30 p.m. He worked for the petitioner in the election. His evidence that Exhibit P-28 shown in the voters column of Taluk Development Board, Bidar the remark 'Nil' and also that Exhibit P-28 was not accompanied by the supplemental list of Ex. R-6(a) remains unchallenged in the course of cross-examination.

32. P.W. 7 Basavannappa has stated that he was founctioning as President of Ourad Municipal Council, during the relevant time. He went to the Deputy Commissioner's office on 17th April 1974 to find out whether his name was included in the voters list and he found that his name was included in the voters list. He looked into the Bidar Taluk Development Board and the voters list of Bidar Taluk Development Board contained the remark (Nil). He saw the voters list of Bidar Taluk Development Board from 5-00 p.m. to 7-00 p.m. There is no cross-examination for respondent-2. In the course of the cross-examination for respondent-1, it is elicited that he looked into the voters list of all the Municipalities and Taluk Development Boards, which constituted the Local Authority Constituency and Exhibit R-6 was the list which he saw in the Notice Board of the Deputy Commissioner's Office, Bidar on 17th April 1974, inclusive of Ex. R-6(a) the supplemental list pertaining to Bidar Taluk Development Board. Thus the trend of cross-examination on behalf of respondent-1 was that Exhibit R-6(a) was supplied to the voters on 17th April 1974. In the course of re-examination for the petitioner, the learned Advocate for the petitioner got it clarified the supplemental list Ex. R-6(a) in Ex. P-6 was not there when he saw the voters list in the Notice Board in the Deputy Commissioner's Office on 17th April 1974. The Court made a note that the witness prevaricated and stated that he was in the voters list up to the page marked Ex. R-6(b) which contained the remark 'Nil' pertaining to the Bidar Taluk Development Board. Thus at the stage of the evidence of P.W. 7, the 1st respondent's case was that Ex. R-6 which was published on 17th April 1974 contained voters names printed upto Ex. R-6(b) as well as names cyclostyled and published in Ex. R-6(a).

33. P. W. 8 Manikrao Patil was the elected Members of the Bidar Taluk Development Board in the year 1968. He has stated that eversince the result of the election as per Gazette Notification Exhibit P-12 till the day of examination, he did not take charge as member of the Taluk Development Board, Bidar. He has stated that he has not received any intimation from the Divisional Commissioner, Gulbarga, intimating him about the extension of term of the Taluk Development

Board, Bidar. Further, he has stated that he went to the Deputy Commissioner's Office on 17th April 1974 in connection with the Local Authorities Constituency of Bidar to see the voters list and to file nomination to the election. He did not file his nomination since there was no list containing the voters of the Taluk Development Board, Bidar. His enquiry revealed that the voters list of Taluk Development Board, Bidar Taluk, contained " Nil " entry. He came to know that on 25th or 26th April, 1974 that the members of the Taluk Development Board, were included in the voters list from one Narayana Reddy. In the course of cross-examination for the 1st respondent it is elicited that he did not give any complaint to any authority about the discrepancy with regard to the absence of voters name of the members of the Taluk Development Board, Bidar, in the list on 17th April 1974 and its appearance later as informed by one Narayana Reddy. In the course of cross-examination for respondent-2, it is elicited that he saw 'Nil' printed page in the voters list pertaining to the Taluk Development Board, Bidar and that he did not see any cyclostyled pages. Thus the trend of the cross-examination for the 2nd respondent is that the cyclostyled pages **viz.,** Ex. R-6(a) was there in the Notice Board at the time he saw it on 17th April 1974.

34. P.W. 9 Viswanathrao, was the members of the Taluk Development Board, Santapur, Ourad Taluk. He has stated that he had gone to the Office of the Deputy Commissioner on 17th April 1974 and looked into the voters list and found that the voters list relating to T.D.B., Bidar contained the statement " " (Nil) in the voters column. He remained in the Office of the Deputy Commissioner till it was closed in the evening. He found people talking that the 2nd respondent would get the names of the members of the Taluk Development Board, Bidar, included in the voters list for the local authorities constituencies. Till the evening he did not find any list published including the names of any members of the Taluk Development Board, Bidar, when he saw the list once again in the evening. In the course of cross-examination for the 1st respondent, it is elicited that except the pages marked as Ex. R-6(a), the other pages were in Exhibit R-6 in the Notice Board. It is also elicited that he did not ask any one as to why the voters list of Taluk Development Board did not include the names of the members of the Bidar Taluk Development Board. In the course of cross-examination for the 2nd respondent he admits that he belongs to the native place of the petitioner and he has denied that he worked for the petitioner in the election. He has admitted that he belonged to the petitioner's party. Further, it is elicited that he accept what he has stated in the examination-in-chief. He did not see voter's list of Taluk Development Board and Municipal Council of either areas. He did not ask anybody as to when the voters list of Taluk Development Board Bidar would be published on that day. But he has informed about the publication of the voters list of Bidar Taluk

Development Board on 16th April 1974. He has denied the suggestion that he had not gone to the Deputy Commissioner's office on that day to see the publication of the supplemental list of voters of Taluk Development Board, Bidar.

35. P.W. 10 was the President, Taluk Development Board, Ourad. He has also stated that the names of the members of the Taluk Development Board, Bidar, was not included in the voters list. He has further stated that he asked the returning officer that there was a roumer to include the names of the members of the Taluk Development Board, Bidar in the voters' list for the local authorities constituency and was informed by the returning officer, the 1st respondent that he could not tell him exactly what the position was. After 6-00 p.m. the returning officer and the Headquarters Assistant left the office. He also left the office at 6-30 p.m. and after after two days he came to know about the inclusion of the names of the members of the Taluk Development Board, Bidar in the voters' list. He has denied the suggestion that he did not buy the voters list on that day.

36. The petitioner P.W. 11 has stated that on 17th April 1974 he purchased one voters list as per per Exhibit P-34. He has stated that the list of the voters, Ex. P-34 contained the names of four taluk development Boards and one upgraded town panchayat and another panchayat and with regard to the T.D.B. Bidar, there was 'Nil' statement in the voters' list, which according to him meant that the mambers of the T.D.B. were not included in the voters' list. On 17th April 1974 he remained in the Deputy Commissioner's office till 4-30 p.m. and no additional list as published in the Notice Board and when he purchased Ex. P-34 has was not supplied with the additional list containing the names of the mambers of the T.D.B. Bidar. He learnt about the inclusion of the names of the members of the T.D.B. Bidar on 21st or 22nd April 1974. According to him, Ex. R-6(a) is antidated and that the 1st respondent was responsible for antidating Ex. R-6(a) and he suspected that Respondent-2 must have influenced the 1st respondent the Returning Officer to antidate Ex. R-6(a) being an influential leader of the congress party in that district. The cross-examination for the 1st respondent is directed to elicit answers that he did not purchase Exhibit P-34 by certain searching questions. The trend of cross-examination reveals that he did not purchase the voters' list on that day which contained the names of the members of the Taluk Development Board, Bidar, enrolled as voters.

37. P.W. 12 Annarao, has stated he purchased a voters list on 17th April 1974 and he did not find any list in respect of the members of the Taluk Development Board, Bidar, being notified in voters list and he did not find a list as per Ex. R-6(a) on 17th April 1974. Further on 20th April 1974 he went there to withdraw the nomination of Shankarappa Chandar whose name has been proposed

and on that day also Ex. R-6(a) was not found in the Notice Board. But he has admitted that he purchased a supplemental list of voters on 18th April 1974. Thus, it is clear that both at the stage of filing the written statement on behalf of the respondents and also during the course of the evidence of petitioner's witnesses the stand taken by the respondents was that the supplemental voters list Ex. R-6(a) was there even before 6-30 p.m. on 17th April 1974.

38. The 2nd respondent has been examined as R.W. 1. He has stated as follows:

"That I was in the Deputy Commissioner's Office on that day between 2-00 p.m. and 3-00 p.m. I made enquiries with the Assistant Returning Officer for the copies of the supplementary voters list. The Assistant Returning Officer asked me to wait for some time for the sale of the supplemental copies. I did not wait for the purchase of the supplemental electoral list on that day, as I had to go for the scrutiny of the nomination papers fixed on 18th April 1974. Then I proceeded to my village. I came to Bidar on 18th April 1974 and was present till 10-30 a.m. ..... I applied to the Assistant Returning Officer for the sale of the electoral roll including supplemental electoral roll."

Further, he has stated that he has signed at Ex. P-7, Ex. P-7(b) is the signature for having obtained the electoral roll on 16th April 1974. He signed at Ex. R-7(a) for having purchased the electoral roll. In the course of cross-examination he has stated that he does not know what items of 0-85 ps. and 0-10 ps. represent in Ex. R-7(b). But, he admits that the clerk of the Deputy Commissioner's Office made the entry as per Ex. R-7(b). He has denied the suggestion that the supplemental list was prepared with his connivance with the electoral registration authority subsequent to 17th April 1974 and it was antidated.

39. R.W. 3, who was working as the Assistant Returning Officer for the election has stated in the course of cross-examination that till 5-00 p.m. he did not know anything about the publication of supplemental list of voters. He has admitted that 0-10 paise entered in Page No. 11 in Ex. P-7 was the price for the supplemental roll and that the sale of the supplemental roll is not separately dated The sale is included in the entries relating to the sale of printed electoral roll. He has further admitted that four entries for sale of supplemental rolls after 15th April 1974 and 17th April 1974 were made either on 17th April 1974 or on subsequent dates. For the supply of supplemental electoral roll either on 17th April 1974 or on subsequent dates, there was no application by the parties or candidates. He has denied the suggestion that since there was no supplemental electoral roll on 17th April 1974 or on subsequent dates, there was no application by the parties or candidates. He had denied the suggestion that since there was no supplemental electoral roll on 17th April 1974 or on subsequent dates, there was no application made by the parties or the candidates to supply the supplemental electoral roll. Ex. P-70 is the paper in respect of the sale and supply of electoral rolls. He admits that it pertains only to the printed electoral roll. Again he has stated that the number

of electoral roll supplied in Ex. P-70 and Ex. P-79 does not contain the sale of electoral roll at Page No. 7 of Ex. R-7. He counted the sale proceeds remitted to the treasury and stated the proceeds of the sale was Rs. 22. After counting in the court, the total amount should have been Rs. 29—90 ps. He has further admitted that the price of Ex. R-6 was 0—85 paise and the price of the supplemental roll was 0—10 paise and he has stated that Ex. R-6(a) was sold at the above rate after 18th April 1974 and on other dates. Thus the evidence produced on behalf of the respondents make it appear that the supplemental list Ex. R-6(a) was sold along with Ex. R-6 the printed electoral roll on 16th April 1974, itself. But the evidence of R.W. 3 is that the supplemental list was sold only after 18th April 1974. Ex. R-7(b) gives an impression that the supplemental roll Ex. R-6(a) which was sold at 0—10 paise per copy was available even on 16th April 1974. Thus, there is clear manipulation in the accounts relating to the sale of the electoral roll, Ex. R-6(a) in Ex. R-7 that it was sold on 16th April 1974. No one has been examined on behalf of the 1st respondent to clarify that in Ex. R-7(b) ten paise was entered after 18th April 1974.However, the evidence of R.W. 3 discloses that the supplemental list Ex. R-6(a) was never sold either on 15th April 1974 or on 16th April 1974 or on 17th April 1974, but they were sold only after 18th April 1974.

40. R.W. 2 Mr. Sangappa, Returning Officer in the course of his examination-in-chief has stated that the printed pages at Exhibit R-6 was published prior to 17th April 1974. The cyclostyled portion of the voters' list marked at Ex. R-6(a) was published on 17th April 1974 and that it related to the voters of Taluk Development Board, Bidar. In the course of the cross-examination he has admitted that the draft of the supplemental electoral roll as per Ex. P-18 was prepared at about 7-30 p.m. after he passed the order Exhibit C-1. Thereafter it was cyclostyled as per Ex. R-6(a). It may be remembered that the Returning Officer was also the Electoral Registration Officer. He has chosen an unusual time for the purpose. Thus the evidence of the witnesses examined on behalf of the petitioner coupled with the admission of R.W. 2 conclusively proves that Exhibit R-6(a) was not published till the closing hours of the Deputy Commissioner's Office on 17th April 1974.

41. Now the question for consideration is whether the oral evidence of R.W. 2 and R.W. 3 receives corroboration from the circumstantial evidence produced in the case to establish the fact, whether the 1st respondent who was also the Electoral Registration Officer, had infact published the supplemental list at Ex. R-6(a) on 17th April 1974 at 7-30 p.m.

42. There is evidence of circumstances in the case that supplemental list containing the names of the members of the Taluk Development Board, Bidar, as per Ex. R-6(a) was not infact prepared and published at 7-30 p.m. on 17th April 1974, but it was prepared and published after the last date of nomination and was antidated.

43. The first circumstance is that on 8th March 1974 as per Ex. P-32, the Chief Electoral Officer, Karnataka, Bangalore by his communication to the Deputy Commissioner, Bidar District, informed him that on the appointment of the Administrator under Section 202(b) of the Karnataka Village Panchayat and Local Boards Act, 1959, elected members of the Taluk Board ceased to exercise the powers and perform or discharge any duties or functions under the said Act or any other law and in view of that the 14 elected members of the Taluk Board, Bidar, were not entitled to be registered for the electoral rolls of Bidar Local Authorities Constituency. On 11th March 1974 another letter Ex. P-33 was addressed to the Deputy Commissioner, Bidar, by the Chief Electoral Officer, informing him that when the term of Taluk Board, Bidar or a Municipality had expired and it is not reconstituted as per law, the concerned Taluk Development Board or Municipality has no elected members. Further that when the Taluk Development Board or Municipality was superseded during the currency of its term and an Administrator was appointed with or without advisory council the legal position is that the members of the concerned Taluk Development Board or Municipality ceased to function.

44. Thus, as early as on 8th March 1974, definite instructions were given to the Deputy Commissioner, Bidar, by the Chief Electoral Officer that the 14 elected members of the Taluk Board, Bidar, were not entitled to be registered as voters in Bidar Local authority constituency.

45. The 2nd circumstance is that R.W. 2 the Returning Officer sought instructions from the Chief Electoral Officer, telegraphically on 16th April 1974 whether the names of the elected members can be included in the voters list as per his marginal note in Ex. P-23, as per Ex. P-23(a) which is a copy application given by the 2nd respondent to the Minister for Community Development and Social Welfare at Bidar Camp on 16th April 1974. Ex. P-52, is the expresss telegram sent to the Chief Electoral Officer and there was no response to the telegram, Ex. P-52.

46. Thus, neither on 16th April 1974 nor on 17th April 1974 the Returning Officer, who was also the Electoral Registration Officer, did not get any clearance from the Chief Electoral Officer to include the names of the members of the Taluk Development Board, Bidar, in the Electoral Roll for the Bidar local authorities constituency.

47. The third circumstance is the absence of evidence corroborating the evidence of R.W. 2, who has deposed that he had received, Ex. P-16, the Notification issued by the Government curtailing the term of office of the Administrator, Ex. P-17 issued by the Divisional Commissioner, notifying the election of the 2nd respondent and another as members of the Taluk Development Board, Bidar and Ex. P-19 the notification issued by the Divisional Commissioner, extending the term of office of 11 members of the Taluk Development Board, Bidar.

48. In this regard, R.W. 2 has stated in the course of his evidence that P.W. 3 Shri Choughale, Under Secretary to Government, D.H. and P.G. Department, Government of Karnataka, met him on 17th April 1974 at 6-00 p.m. and handed over a copy of the Notification Ex. R-16 and by which the term of office of the Administrator, Taluk Development Board, was curtailed from 16th April 1974. Further, he has stated that he received, Ex. R-17 from the Divisional Commissioner, notifying the names of the 2nd respondent and another and further he has received Ex. R-19 on 17th April 1974 from the Divisional Commissioner, Gulbarga, extending the term of office of the eleven members of the Taluk Development Board, Bidar.

49. Now, the question is whether R.W. 2, had actually received these Notifications and that these Notifications were before him when he purported to pass the order as per the original of Exhibit C-1, on the basis of which R.W. 3 prepared draft supplemental electoral roll as per Ex. P-18. He has further categorically stated in the course of cross-examination that on 17th April 1974, the only voters list that was published was as per Exhibit P-34 or Ex. R-6, except Ex. R-6(a). He has further admitted that according to Exhibit P-34(a) and Ex. R-6(b), there was no voters list for Taluk Development Board, Bidar, for the Local Authorities Constituency. He has further stated that when he published the list of candidates contesting the election Exhibit R-6, Voter's had been published and Ex. R-6(a) had not been published. Thus, this evidence in cross-examination contradicts his evidence in examination-in-chief that the cyclostyled portion of the voters list marked as Ex. R-6(a) was published on 17th April 1974.

50. R.W. 2 has stated that P.W. 3 met him on 17th April 1974 at his Office and handed over the copy of the Notification Ex. R-16, which curtailed the term of office of the Administrator from 16th April 1974 and after the receipt of Ex. R-16, he initialled and dated it. He has given evidence that he received Ex. R-17 notifying rspondent-2 and another person as members of Taluk Development Board, Bidar. Further, he has stated that by the time he received Ex. R-16 the members of the Taluk Development Board, Bidar were 16. Thereafter, he directed the office to include 16 members of the Taluk Development Board, Bidar, in the voters' list of local authorities constituency, Bidar and the office prepared a draft voters list. He approved the draft, Ex. R-18 and then asked the office to cyclostyle and prepare copies of Ex. R-18. Further, he has stated he received on 17th April 1974 a copy of the Notification as per Ex. R-19 extending the term of office of eleven members.

51. R.W. 2 has stated that P.W. 3 Mr. Chougale, handed over a copy of Ex. P-16. But, P.W. 3 has given a different version in the course of his evidence. He has stated that on 17th April 1974, he left Bangalore to Bidar by plane to Hyderabad and reached

Bidar by Car at 6-00 p.m. He did not find his Minister at Bidar, as the Minister had gone to Gulbarga. He did not talk to the Deputy Commissioner anything about the local authorities constitpency as he was not concerned with it. He has stated that he does not remember at that time whether he handed over any documen: to the Deputy Commissioner, Bidar. He admits that he was entrusted with the papers relating to the appointment and curtailment of the Administrator, Taluk Development Board, Bidar. He reached Gulbarga at 8-30 p.m. with the papers, met the Minister and handed over the document; and that was the original of Ex. R-3, which he handed over to the Minister at Gulbarga. That Ex. R-3 is the Notification relating to the curtailment of the term of office of the Administrator. But the version given by R.W. 2 in the course of cross-examination is that he was informed by P.W. 3 to act according to his instructions and both of them discussed regard-the curtailment of the term o f office of the Administrator, Taluk Development Board, Bidar and, therefore, he handed over the Notification Ex. R-16. The evidence given by P.W. 2 is inconsistent with the evidence given by P.W. 3 in this regard and does not corroborate the evidence of R.W. 2. R.W. 2 definitely says that he was not aware of the curtailment of the term of office of the Administrator, until he received Ex. R-16, and the purpose of the visit of P.W. 3 was to handover Ex. R-16 to him. The evidence of P.W. 3 conclusively establishes that he wanted to see the Minister with the original of Ex. R-3 which is marked in this case as Ex. R-16, the curtailment Notification. When the original, itself, was shown to the Minister at 8-30 p.m. and that P.W. 3 did not remember whether he had handed over any document to R.W. 2, it is not possible to believe the evidence of R.W. 2 that P.W. 3 had handed over a copy of the Notification, Ex. R-16, which enabled him to pass the original order of Exhibit C-1. Thus the assertion of R.W. 2 that he got prepared and published the draft voters list, Ex. R-18 and got it cyclostyled as per Ex. R-6(s) on the night of 17th April 1974 on the basis of Ex. R-16 is totally falsified. There is no evidence as to when the Government of Karnataka passed the order contained in Ex. R-16. Further, why P.W. 3 went with the original of Ex. R-3 to Bidar on 17th April 1974 at 6-00 p.m. and why he carried it in the night at 8-30 p.m. to the Minister's camp at Gulbarga and when the Minister passed the order is shrouded in mistery. It was the duty of the 1st respondent to get these circumstances explained in order to enable the Court to believe his version that he got prepared Exhibit R-18 only after the receipt of Ex. R-16.

52. As regards, Exhibit R-17, R.W. 2 in the course of his cross-examination has stated that he was not able to say the exact time or the approximate time as to when he received Ex. R-17. He does not remember, whether Ex. R-17, was received by Registered Post or Ordinary Post, or through the Messenger. He admits that 'To and From' Registers are maintained in the Deputy

Commissioner's Office. After the communication is received, the office gives numbers to the communications received or sent in the 'To and From' Registers after putting the official seal. Further, he admits that Exhibits R-16, R-17 and R-19 do not bear any number of the 'From' Register, nor do they bear the seal of the office of the Deputy Commissioner. He does not also remembers whether Ex. R-16, Ex. R-17 and R-19 were accompanied by any dockets addressed to the Deputy Commissioner enclosed to them. He further admits that the communications received in connection with the election, would generally bear the seal 'Election Urgent'. But he admits that Exts. R-16, R-17 and R-19 do not bear the seal "Election Urgent".

53. R.W. 3 is the Assistant Returning Officer, who is examined to corroborate the evidence of R.W. 2, with regard to the receipt of Exhibits R-16, R-17 and R-19. He has stated that he was present when Notification Ex. R-16 was handed over to R.W. 2 by P.W. 3 and after Ex. R-16 was received and that his office had already received Exts. R-17 and R-19 issued by the Divisional Commissioner, action was taken to include the names of sixteen members in the voters list. Ex. C-1 is the order passed by R.W. 2. He directed the case worker to prepare the draft electoral roll and rectified the mistakes and thereafter, it was approved by R.W. 2. He got them cyclostyled and put that list on the Notice Board, in the Deputy Commissioner's Office and sent copies to Taluk Office, Bidar and B.D.O's. Office, Bidar in the night itself. The action taken by him in respect of the preparation and publication of Ex. R-18 took place on the night of 17th April 1974. In the course of cross-examination, he admits that Exhibits R-16, R-17 and R-19 do not bear the seal of the Deputy Commissioner's Office nor the 'Inward' number. He further admits that one Dharmendra, Election Clerk, maintained the Registers of all communications received relating to Election that was held in May, 1974 and entered them in the case history register. He admits that no case history number is written at Exhibits R-16, R-17 and R-19 and, therefore, they do not find a place in the case history register. He further admits that there is no other Register or document maintained in the Deputy Commissioner's Office at Bidar, which shows that Exhibits R-16, R-17 and R-19 were received in the Office of the Deputy Commissioner, Bidar on 17th April 1974. He has further stated that he would always put his initial to the correspondence received by him and that he admits that Exts. R-16, R-17 and R-19 were received by him, but they do not bear the initials and date.

54. In order to corroborate the oral evidence of R.Ws. 2 and 3 that Exts. R-16, R-17 and R-19 were received by them on or before 17th April 1974, it was incumbent upon them to produce the 'To and From' Registers of the Deputy Commissioner's Office, Bidar, and the History Case Register of the Election Branch to prove that these three Notifications were actually received in that Office

on 17th April 1974. An adverse inference that those registers did not contain any entry relating to these three Exhibits has to be drawn in view of the non-production of the 'To and From' Registers and History Case Register. Further, from the admission of R.W. 3 that Exhibits R-16, R-17 and R-19 do not bear any seal of the Office of the Deputy Commissioner and do not also bear any 'Inward' number proves that those orders in Ex. R-16, R-17 and R-19 it is not possible to say that those exhibits were before R.W. 2 and R.W. 3 on 17th April 1974. The evidence of R.Ws. 2 and 3 that they had received these three communications on 17th April 1974 is not true, reliable and worthy of acceptance. This is a clinching circumstance in the case which establishes that R.W. 2 had not passed any orders as per the original of Ex. C-1 and got Exhibit P-18 prepared and published as per Exhibit R-6(a).

55. As regards (Exhibit) C-1, the 2nd respondent did not produce nor referred to it in the course of his examination-in-chief. He merely stated that he approved the draft and then asked the Office to cyclostyle it. Neither the 1st respondent nor the 2nd respondent took any initiative to get Exhibit C-1 marked in the case. But the Court in the course of cross-examination got it marked as a Court Exhibit C-1. Exhibit C-1 is a copy of the order passed by R.W. 2. R.W. 2 has stated that he passed the original orders as per Exhibit C-1 at 7-30 p.m. But in the course of cross-examination he has stated thus:

"There is no notes and order-sheets pertaining to Ex. C-1 passed on 17th April 1974. I have not passed any order on the notes and the order-sheets in respect of Ex. C-1. Ex. C-1 is the fair copy of the order passed by me. The original order of Ex. C-1 is not forthcoming in my file. It is not true to suggest that I did not pass the original order contained in Ex. C-1 on 17th April 1974. While I was passing the order contained in Ex. C-1, I instructed the office to prepare Ex. R-18. Both were done simultaneously. I do not remember who cyclostyled Ex. R-18".

He further admits that in Ex. C-1 the proceedings issued under his signature, reference to Ex. R-17 is not cited.

56. The evidence of R. W. 2 extracted above clearly establishes that Ex. C-1 was never passed on 17th April 1974. It might have come into existence at any time after 17th April 1974, in order to support the action taken by R.W. 2 for inclusion of sixteen members of the Taluk Development Board, Bidar. It is astonishing that the original of such important document is not forthcoming in the file of R.W. 2. It is not unreasonable to infer that Ex. C-1 came into existence under suspicious circumstances to support the action taken by R.W. 2 in respect of Ex. R-18 and Ex. R-6(a). Therefore, the absence of citation with reference to Ex. R-17 in Ex. C-1 is another circumstance to show that R.W. 2 had not before him Exhibit R-17 on the night of 17th April 1974. It is clear from the evidence referred to above that the very basis for preparation of the draft Exhibit R-18 which is said to have been cyclostyled as per Ex. R-6(a) is utterly absent in this case and the 1st respondent has

failed to establish the same by producing reliable and trustworthy evidence. This is another circumstance, which falsify the evidence of R.Ws. 2 and 3 that Ex. R-18 the draft electoral roll including sixteen members of the Taluk Development Board, Bidar, was prepared on 17th April 1974 at 7-30 p.m. and later on got cyclostyled as per Ex. R-6(a). This circumstance lend support to the plea of the petitioner that sixteen members of the Taluk Development Board, were included in Ex. R-18 and Ex. R-6(a) after the last date for nomination **viz.,** 17th April 1974.

57. The fourth circumstance which lend support to the petitioner's plea that sixteen members of the Taluk Development Board, Bidar, were included after the date of nomination is Exhibit P-68 an application given by one Chandrakanth seeking information from the 1st respondent regarding the existence of any Notification from Government for inclusion of sixteen members of the Taluk Development Board, Bidar, in the voters list and which remained unreplied on 17th April 1974. R.W. 3 has stated that a reply was sent to him on 18th April 1974. If as stated by R.Ws. 2 and 3, Ex. R-6(a) was published on the night of 17th April 1974 nothing prevented them from passing an order then and there and issuing an endorsement to the applicant of Ex. P-68, who was keen in getting information on 17th April 1974 itself. The evidence of P.Ws. disclosed that there was talk in the Deputy Commissioner's Office that at the instance of the 2nd respondent the names of sixteen members of the Taluk Development Board, would be included in the voters list, as these were watching the developments in this connection near the Deputy Commissioner's Office till night on 17th April 1974. The application of Chandrakanth was to elicit on answer whether the sixteen members of the Taluk Development Board, Bidar, were included in the voters list on 17th April 1974 itself. Failure, to reply him on that date is another circumstance that R.W. 2 had not received any Notification from the Government, which enabled him to include the sixteen members of the Taluk Development Board, Bidar, in the supplemental list.

57. The fifth link in the evidence of circumstance relates to the infirmities in respect of preparation and publication of Ex. R-18, the draft electoral roll from which Ex. R-6(a), the cyclostyled supplementary copy of the electoral roll for the inclusion of the 16 members of the Taluk Development Board, Bidar, was prepared.

58. R.W. 2 has stated that by the time he received Exhibits R-16 and R-17 the Notifications the number of members of the Taluk Development Board, Bidar, was sixteen. He asked the office to include the sixteen members of the Taluk Development Board, Bidar, in the voters list of the local authorities constituency. The office prepared is draft list as per Exhibit R-18. According to him, it is dated 17th April 1974 and he approved Ex. R-18 and asked the office to cyclostyle and prepare copies of Ex. R-18.

59. R.W. 3 has stated that he took necessary action for the inclusion of the names of the sixteen members in the electoral roll in the local authorities constituency by directing the case worker to prepare the draft of the electoral rolls. He rectified the mistakes, thereafter he took the approval of the Deputy Commissioner and gave the list for cyclostyling and obtained copies of the electoral rolls and published the list on the Notice Board in the Deputy Commissioner's Office. He sent copies to the Taluk Office and B.D.O's. Office, Bidar. Ex. R-18 is the draft electoral roll got prepared from the case workers.

59. R.W. 3 in the course of his cross-examination has stated that Ex. R-18 was prepared by the case worker Dharmendra and he had not put his initials on Ex. R-18. He has stated that the corrections at Ex. R-18(f) and (g) were made by him. But he has not initialled those corrections. As regards Ex. R-18(b) the column relating to the date he has stated thus:

"In Ex. R-18(b) the case worker might have put the date and month in ink. I did not observe whether any date was put in Ex. R-18. The date, month and year found in Ex. R-18(b) are in Kannada figures. In Ex. R-6(a) English figures denoting the date is typed. It may be due to this fact that the Kannada typewriter had no figures in Kannada. Ex. R-6(a) bears the initials of one Khadri incharge Sheristedar and Dharmendra, the case worker. But Ex. R-18 does not bear their initials. It is not true to suggest that corrections in Kannada is not done by me. (The witness was asked to write the words 'C/o' in Kannada letters. It is Ex. P-72. I compared the words written in Ex. P-72 "Ex. R-72 and also the words which he corrected in Ex. R-18(f) and (g), I find there is some difference between the two writings".

60. The evidence of R.Ws. 2 and 3 with regard to the preparation of draft electoral roll Ex. R-18 is unreliable and not worthy of acceptance. Why the date column in Ex. R-18(b) was left blank when the draft was prepared is not explained by R.Ws. 2 and 3. Dharmendra who is stated to have prepared this draft has not been examined. Further the correctness have not been initialled in Ex. R-18, but such initials of Sheristedar and the case worker are found in Ex. R-6(a) which indicates that Ex. R-6(a) was not the cyclostyled true copy of Ex. R-18. Further there is no evidence as to who wrote the date in column of the date which was left blank by putting the Kannada the figures '೧೭' (17). In Ex. R-18(b) even the month is overwritten. Though in Ex. R-18(b) the month, date and the year is written in Kannada figures in Ex. R-6(a) the date month and year is typed in English. These material discrepancies go to the root of the matter and disprove the assertion of R.Ws. 2 and 3 that Ex. R-18 was prepared on 17th April 1974 at 7-30 p.m. The fact that the date column in Ex. R-18(b) was left blank gives rise to a reasonable inference that it was left blank to be filled up at later stage. The discrepancy with regard to the Kannada figures in Ex. R-18(b) and English figures in Ex. R-6(a) is indicative of the fact that Ex. R-18 was not looked into while preparing Exhibit R-6(a) the cyclostyled copy of the electoral roll. Thus the evidence produced on behalf of the first respondent to

prove that Ex. R-18 was prepared on 17th April 1974 and immediately thereafter Ex. R-6(a) was prepared is not convincing and unworthy of acceptance. The infirmities pointed out in Ex. R-18 and Ex. R-6(a) lend support to the inference that they were not prepared on 17th April 1974, but they were manipulated after the last date for nomination i.e., 17th April 1974. The evidence of R.W. 2 that after the preparation of Ex. R-6(a), it was notified in the Deputy Commissioner's Office and copies were sent to the Taluk Office and B.D.O's Office at Bidar in the night is a make believe story. It is common knowledge that public offices generally work from 10-00 a.m. to 6-00 p.m. and not during nights. If what R.W. 3 has stated is true, nothing prevented the respondents from summoning and examining the officials who received copy of Ex. R-6(a) in the Taluk Office and B.D.O's Office at that odd hour of the night to prove the fact that Ex. R-6(a) was notified in the Taluk Office and B.D.O's Office at Bidar. The contradictions, inconsistencies and omissions pointed out above, militate against the truth of the assertions of R.W. 2 and 3 that Exhibit R-18 and Ex. R-6(a) were prepared and published on 17th April 1974 at 7-30 p.m.

62. The sixth circumstance is R.W. 2 informing the Chief Electoral Officer regarding the inclusion of the names of the Members of the Taluk Development Board and also the revised list of polling stations as per Ex. P-65 on 18th April 1974. He has stated that he sent the communication Ex. P-66 and Ex. P-65 on 18th April 1974. There is no evidence produced by the 1st respondent to show when these two communications reached the Chief Electoral Officer, Karnataka State, Bangalore, and whether they were dated 18th April 1974. When this was noticed in the course of enquiry, the Court directed the Government Advocate to produce the communication addressed by the Chief Electoral Officer, Karnataka State, to the Secretary Election Commission of India, New Delhi and in response to the direction, the learned Government Advocate produced Ex. R-27, dated 20th April 1974 which informed the Secretary to the Election Commission of India, New Delhi, about the revised list of Polling stations and map of Bidar Local Authorities Constituency received from the District Election Officer and Deputy Commissioner, Bidar and also sought for the Commissions approval to the revised list of polling stations. But there is no indication in this letter about the inclusion of the 16 members of Taluk Development Board, Bidar, in the supplemental list at Ex. R-6(a) The Court directed the Chief Electoral Officer to cause production of the letter either in original or copy sent to the Secretary, Election Commission of India for the inclusion of the names of 16 members of the Taluk Development Board, Bidar, through the Government Advocate. But, it was not produced. However, R.W. 2 has

stated in the course of his evidence that he received a telegram from the Election Commission of India as per Ex. R-21 on 25th April 1974. It reads thus:

"Presumed that inclusion of names of 16 members of the Bidar Taluk Development Board in electoral roll in pursuance of the Government Notification dated 17th April 1974 was not done after the last date for filing nominations in Bidar Local Authorities Constituency. If so, Commission approves the revised list of polling stations for Bidar Local Authorities constituency received therewith. Inform all contesting candidates in writing."

63. It is clear from Ex. R-21 that Election Commission of India has approved only the list of Polling Stations for Bidar Local Authorities Constituency, but presumed that inclusion of the names of the sixteen members of the Bidar Taluk Development Board, in the electoral roll in pursuance of the Government Notification, dated 17th April 1974 was not done after the last date for filing nominations in Bidar Local Authorities Constituency. The opinion expressed by the Election Commission of India in Ex. R-21 can be explained on the only ground that communication for inclusion of sixteen members of the Taluk Development Board, Bidar for the Local Authorities Constituency started after the last date of nomination, *i.e.*, from 18th April 1974 onwards. If, as deposed by R.Ws. 2 and 3 Ex. R-18 and Ex. R-6(a) had been prepared and published on 17th April 1974 at 7-30 p.m. nothing prevented them to send a communication to the Chief Electoral Officer and the Election Commission on the same date, **i.e.**, 17th April 1974. Further R.W. 2 has failed to inform about the inclusion of sixteen members of the Taluk Development Board Bidar to all the candidates as directed by the Election Commission. This circumstance also does not corroborate the assertion made by R.Ws. 2 and 3 with regard to the date and time of inclusion of members of the Taluk Development Board, Bidar, in the Electoral Roll.

64. Now the 7th circumstance relates to the question as to when the Notifications Exhibits R-3, R-2 and R-4 were actually printed and published by the Compiler of Karnataka Gazette Extraordinary and they became operative.

65. Before considering this aspect of the case, it is necessary to bear in mind, the legal position relating to the curtailment of the term of office of the Administrators and also as to the date on which the declaration of election of any member of Taluk Development Board, Bidar and also the dates from which any extention given to any Taluk Development Board, would become legally operative. The relevancy for determination of this question is not in any way concerned with the legality or otherwise of the acts done by various authorities to issue the orders Exhibits R-16, R-17 and R-19, but to assertion the truth of the assertion made by R.Ws. 2 and 3 that Ex. R-18 and Ex. R-6(a) were prepared and published on 17th April 1974, on the basis of those exhibits.

66. Therefore, I will now proceed to set out the provisions of the V.P. and L.B. Act of 1959 in so far as they are necessary to decide the issues in controversy.

67. Sub-section (20) of Section 2 defines the word Notification: It reads thus:

"Notificate' means a Notification published in the Official Gazette".

68. Section 107 of the Act, deals with the publication of names of members. It reads thus:

"The names of all members elected to any taluk board, shall be reported to the Commissioner, who shall notify it in the gazette."

69. Section 108 fixes the term of office of the members of the Taluk Board elected at a general election. They shall hold office for a term of four years provided that the Government by Notification for reasons to be stated therein extended from time to time the said term for a period of not exceeding six years in the aggregate.

70. Section 109 provides for the commencement of term of office of the members. It reads thus:

"The terms of office of members elected at a general election under sub-section (1) of Section 96 shall commence on the date immediately after the date of the expiry of the term of office of the outgoing members of the Taluk Board or on the date of the publication of their names under Section 107 whichever is later."

71. Section 202-B of the V.P. and L.B. Act, provides for power to appoint an Administrator in certain cases. It says:

Notwithstanding anything contained in this Act,—

(1) whenever—

(a) any general election to a Taluk Board under this Act or any proceeding consequent thereon have been stayed by an order of a competent court or authority; or

(b) the election of all the members or more than two-thirds of the total number of elected members of the Taluk Board has been declared by a competent court or authority to be void; or

(c) the term or the extended term of office of the elected members of the Taluk Board has expired and the new Taluk Board has not been constituted after a general election in accordance with the provisions of this Act; or

[(d) the seats of more than two-thirds of the elected members of the Taluk Board have become vacant by their resignation or otherwise, the Government shall, by notification, appoint an Administrator for such period as may be specified in the notification and may by notification curtail or extended the period of such appointment;]

(2) on the appointment of an Administrator Under sub-section (1), and during the period of such appointment, the said Taluk Board and committees thereof and the President, Vice-President and other authorities charged with carrying out the provisions of this Act, or any other law, shall cease to exercise any powers and perform and discharge any duties or functions conferred or imposed on them by or under this Act or any other law and all such powers shall be exercised and all such duties and functions shall be performed and discharged by the Administration."

It is clear from the provisions of Section 107, that the names of all the elected members to any Taluk Board, shall be reported to the Commissioner who shall notify the same in the Gazette. Section 109, lays down that the term of office of the members elected to the Taluk Board shall commence on the day immediately after the date of expiry of the term of office of the outgoing members of the Taluk Board or on the date of publication of their names under Section 107, whichever is earlier. Further, the provisions of Section 202-B(1) and (2) make it abundently clear that any case falling under clauses (1)(a) to (d) the Government shall by a Notification appoint an administrator for such period as specified in the Notification and may by Notification curtail or extend the period of such appointment. Sub-section (2) of that Section lays down that during that period the President, Vice-President and other authorities charged with carrying out the provisions of the Act or any other law, shall cease to exercise any power and perform and discharge any duties or functions conferred or imposed on them by or under this Act or any other law.

72. Therefore the position of law is that the newly elected members are required to be notified in the Gazette and their term of office commences on the date of publication of their names under Section 107. Further that the Government shall by Notification appoint an Administrator for any specified period and also by Notification curtail or extend the period of such appointment. In all these three cases, the orders passed by the Government and other authorities shall be operative only from the date of Notifications published in the official Gazette. But mere passing of an order without its publication in that official gazette, such orders will not become a Notification in the eye of law and as such the order also will not be operative on the date of the order, but, it shall be operative only from the date of Notification in the official gazette. Notification in this context means, Notification published in the official gazette. The intendment of the Legislature is to give notice to the public of the orders passed by the competent authorities under those sections and to make them operative only from the dates of their publication in the Official Gazette.

73. This view is supported by a decision of the Supreme Court in **Harla** vs. **the State of Rajasthan** (A.I.R. (138) 1951 S.C. 467)— Bose, J, (as he then was) observed:

"In the absence of any special law or custom, we are of opinion that it would "be against the principles of natural justice to permit the subjects of a State to be punished or penalised by laws or which they had no knowledge and of which they could not even with the exercise of reasonable diligence have acquired any knowledge. Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcasted in some reasonable way so that all men may know what it is; or at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence.

The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a Resolution without anything more is abhorrent to civilised man. It shocks his conscience. In the absence therefore of any law, rule, regulation or custom, we hold that a law cannot come into being in this way. Promulgation or publication of some reasonable sort is essential." ..... There must be publication before it can become law, and in England the nature of the publication has to be prescribed by an Act of Parliament ..... We hold that, in the absence of some specific law or custom to the contrary, a mere resolution of a Council of Ministers in the Jaipur State without further publication or promulgation would not be sufficient to make a law operative."

The Division Bench of the High Court of Rajasthan in **Jagjit Singh and others** vs. **State of Rajasthan and others** (A.I.R. 1968 Rajasthan 24) had laid down that printing of a notice in the official gazette which was not out of the press cannot be deemed to be a good notice to the public at large. The learned Judge in para 9 of the Judgment has observed as follows:

"The notice appointing Shri Shivashankar, Home Secretary as an authority to hear objections under Section 43 of the Act was published in the Rajasthan Gazette on the 4th December 1961, but it is admitted by the State Government that this Gazette was not despatched to the subcribers upto the 15th December, 1961, though the copy of the same was sent to the secretariat on the 12th December, 1961 In such circumstances, it is urged by Mr. Agarwal that the printing of a notice in the Official Gazette, if it was not out of the press cannot be deemed to be a good notice to the public at large. We find considerable force in this argument of Mr. Agarawal ".

I am in respectful agreement with the view expressed by the learned Judges of Rajasthan High Court and th ratio of the decision of the Supreme Court quoted above is binding on this Court. In the instant case also that order to curtail the term of office of the Administrator Taluk Development Board, Bidar, was made at Gulbarga after 8-30 p.m. in the night as disclosed in the evidence of P.W. 3. Further the decision to prepare and publish Exhibit R-18 and Ex. R-6(a) was made in the Deputy Commissioner's Chamber at 7-30 p.m. by R.W. 2 the Electoral Registration Officer, even before original of Exhibit R-3 was complete. The public had no access to it. Nevertheless, it affected their right in the election which is a process of democracy. Therefore, the order **viz.**, Exhibits R-16, R-17 and R-19 did not become operative until the Notifications **viz.**, Exhibits R-2, R-3 and R-4 were printed and published and sent out of the press.

74. It is therefore necessary to determine on that dates Notifications Exhibits R-3, R-2 and R-4 were printed, published and were sent out of the Government Press, Bangalore.

75. Exhibits R-16, R-17 and R-19 though styled as Notifications they cannot be deemed to be Notifications until they are published in the official gazette, in view of what has been discussed above. Therefore, they are deemed to be mere orders passed by

the competent authorities under the Village Panchayat and Local Boards Act, and therefore, they will be referred to as the orders. Exhibit R-16, is an order issued by the Government curtailing the period of appointment as Administrator, Taluk Development Board, Bidar, upto and inclusive of 16th April, 1974. It bears the date 17th April 1974.

76. Exhibit R-17 is the copy of the order declaring the election of respondent-2 and another member Shri Viswanatharao to the Taluk Development Board, Bidar. It is dated 15th April, 1974, and was issued by the Divisional Commissioner, Gulbarga. Exhibit R-19 is the copy of the order issued by the Divisional Commissioner, Gulbarga, extending the term of eleven members of the Taluk Development Board, Bidar, upto 28th February 1975 or till the proposed elections were completed. It is dated 17th April 1974. It is significant to note that in Exhibit R-19, the compiler of the **Karnataka Gazette,** Bangalore was requested to publish this order in the Extraordinary Gazette with the date of 17th April 1974 urgently and to supply fifty copies to the Deputy Commissioner, Bidar and to his office. The Gazette Notifications, of Exhibit R-16 is marked as Exhibit R-3, Exhibit R-17 is marked as Exhibit R-2 and Exhibit R-19 is marked as Exhibit R-4.

77. The burden of proving on what date these Notifications were actually published in the **Karnataka Gazette,** Extraordinary is upon the petitioner.

78. P.W. 11, the petitioner has given evidence that in respect of Anjol and Janwada so far as his enquiry revealed that the election of two members notified in Exhibit R-2 was not gazetted till 17th April 1974 nor on 17th April 1974. Further he has given evidence that on 17th April 1974 there was no curtailment of the period for the appointment of an Administrator, Taluk Development Board, Bidar and no Gazette Notification was published on or before 17th April 1974, regarding the curtailment of the duration of the Administrator's term of office and also there was no Notification on that date extending the term of the office of the members of the Bidar Taluk Development Board. He has also stated that after the issue of Exhibit P-18, which is a copy of the Notification of the Karnataka V.P. and L.B. (Postponement of Election) Act, 1974, no elections were held to any of the Taluk Development Boards in Bidar District. The Notifications at Exhibits P-18 according to him came into force on 6th April 1974 and from that date, the Administrator was functioning in the Bidar Taluk Development Board. He has further stated that his enquiry revealed that Exhibit R-3 was never published upto 22nd April 1974 and that it was not in existence on 17th April 1974. He has stated that the Notifications marked as Exhibits R-2 and R-4 were similarly not in existence on 17th April 1974. Exhibits R-2, R-3 and R-4 were not

printed and published on the dates mentioned therein and that his enquiry revealed that Exhibits R-2, R-3 and R-4 were antidated. He came to know about it when he made enquiry in the Government Press and after verifying the concerned Registers by the authority. He has also given evidence that those records relating to the publication of Exhibits R-2, R-3 and R-4 were sent to the High Court and were in the custody of the High Court. He took steps to summon them. An order was passed and Sapina was sent to the Registrar High Court of Karnataka to produce all the concerned records that were in the custody of the High Court and also summons were issued to the officer in the Karnataka Government press to produce other relevant documents relating to the publication of Exhibits R-2, R-3 and R-4 in the **Karnataka Gazette,** Extraordinary. They were produced before the Court.

79. The petitioner has examined P.W. 13 Bommannaiah to prove the dates on which Exhibits R-2, R-3 and R-4 were actually printed and published in the **Karnataka Gazette,** Extraordinay. At the time of his examination he was working as an Assistant Director, Government Press, Bangalore. He has given that the original matter sent for printing would be first seen by the compiler of Gazette or in his absence by one of his Gazetted Assistants. Then it would be sent to the Manager of the Gazette Office. From the Manager the original paper goes to the concerned case worker. He would make an entry in the Extraordinary Gazette Register. Then the original matter would come to the composing Section. When the Original matter passes through those authorities they will affix their initials. Then the matter is put on the machine and the machine proof would be taken and given to machine revisers. They would go through the machine proof and the final proof in order to check up any mistakes crept into the printing matter. After the matter is printed, it will be entered in the printing register as printed and the copies would be sent to the Gazette office for sending copies to the concerned authorities. When the copies were sent out of the press there will be an entry in the Spare Copy Register. In April and May 1974, he was working in the Forms Branch. He has identified Exhibits R-2, R-3 and R-4. He has stated that composing, printing and publication of these Notifications find a place in the relevant registers maintained in the Press for this purpose. He has stated that he did not bring the originals of Exhibits R-2, R-3 and R-4 as they were kept in the press for a period of six months from the date of publication and thereafter they were destroyed. Thus the originals of Exts. R-2, R-3 and R-4 are not available. According to his evidence, as per the entry in Exhibits P-45 the Gazette Extraordinary Register, Exhibit R-2 is entered at Sl. No. 682 on 17th April 1974. As per Exhibit P-45(b) the receipt of Exhibit R-3 is entered in Exhibit R-45(a) on 19th April 1974. The manuscript of Exhibit R-4 was received from the Divisional Commissioner on 20th April 1974 as per Exhibit P-45(c). He has stated that after

looking into the Composing Register, Exhibit P-46, that there was no entry in it on 17th April 1974. And Exhibit R-3 was given for printing on 27th April 1974 as per entry Exhibit P-48(b). Exhibit P-47 is another Composing Register. It contained the entry relating to Exhibit R-2 and the entry is dated 17th April 1974 and marked as Exhibit P-47(a). It was printed on 18th April 1974 as per Exhibit P-48(c).

80. As regards the printing of Exhibit R-3, P.W. 13 has stated that in the Gazette Extraordinary Register, Exhibit P-45, Exhibit R-3 is entered in the Register on 19th April 1974 as per Exhibit P-45(a). In the Notification Exhibit R-3, the number printed is 682 and there is omission of the letter 'A'. Exhibit R-3 was given for printing on 27th April 1974 as per Exhibit P-48(b). Exhibit P-47 is another Composing Register and the entry relating to Exhibit R-2 is dated 17th April 1974 and it was printed on 18th April 1974. Exhibit P-49 is another Register for Composing and there is an entry on 27th April 1974 pertaining to Extraordinary Gazette 682 and it is marked as Exhibit P-49. That relates to the Extraordinary Gazette No. 682. Exhibit R-4 was given for composing on 20th April 1974 and it was printed on 26th April 1974. Ex. R-4 was received on 20th April 1974.

81. In the course of cross-examination he has stated that Ex. P-45(a) gives the date on which it was received by the composing branch and Ex. P-45(b) is the column intended for the initials of the composing foreman and it is blank. But the initials are found at the other end of the entry. He does not know three days, viz., 17th April 1974, 16th May 1974 and 23rd May 1974 mentioned in the column relating to the date of publication in Ex. P-45(b). In Ex. P-45(b) the column relating to the date on which the papers sent to the branch is left blank. He stated that Ex. P-45 is a permanent register and he has further stated in Ex. P-45(d) the column is left blank. Certain answers were elicited from this witness in the course of his cross-examination to show that the registers of the Government Press produced before the Court were not regularly kept. But, Ex. P-45 is a permanent Register and there cannot be any doubt that it has been regularly kept in the course of official business in the printing press. It is also elicited in the course of the cross-examination that the Government usually writes the date on which the extraordinary gazette would be published and usually the printing press publishes them on the same day and there may be delay due to rush of work and in such cases the printing press publishes it on a subsequent date putting the date on which the extraordinary gazette was to be published. In the course of the cross-examination for the 1st respondent, it is elicited that this witness has no personal knowledge about the entries made in Ex. P-44 to Ex. P-49 and the entries were made by the concerned case worker and foreman. In the re-examination, it has been made clear that the case worker had worked under him and he is familiar

with his handwriting and that the entries at Ex. P-45(a) to (e) in Ex. P-45 are in his handwriting.

82. The evidence of P.W. 13 set out above conclusively proves that Exhibits R-2, R-3 and R-4 were not printed on or before 17th April 1974. Further his evidence conclusively proves that Exhibit R-17 of which Ex. R-2 is the Notification was published on 18th April 1974. Exhibit R-16 of which Exhibit R-3 is the Notification was published on 27th April 1974, and Exhibit R-19 of which Exhibit R-4 is the Notification was published on 26th April 1974. But curiously enough that Exhibits R-2, R-3 and R-4 bear the date 17th April 1974. The argument of Mr. K. R. D. Karanth is that much reliance cannot be placed on the documents produced by P.W. 13 the officer of the Karnataka Government Press. Further he argued that several documents produced by him are not properly kept in the course of official business. He urged that inspite of the evidence given by P.W. 13 it must be presumed that Exhibits R-3, R-2 and R-4 deemed to have been made in view of the provisions of Section 30 of the General Clauses Act. Similar contention was taken when I.A. No. 5 and I.A. No. 8 were filed by the petitioner to summon witnesses to produce documents from the Karnataka Government Press and also from this Court Received in Writ Petition No. 6761/1974. This contention was negatived holding that deemed provisions provided in Section 30 of Karnataka General Clauses Act, does not disentitled the petitioner to prove with the aid of evidence that the orders relating to the Notifications were not published in the Gazette on the dates printed on them (**Vide** order on I.As. V and VI). The documents produced by P-13 from the Government Press are documents maintained in a Government Establishment. They are of great evidenciary value. Further Exhibit P-45, Extraordinary Gazette Register is a permanent Register and it reflects the true state of affairs and it must be accepted as true and correct. Thus, it is conclusively established that Exhibits R-2, R-3 and R-4 though published on 18th April 1974, 27th April 1974 and 26th April 1974 respectively have been antidated to show that they were printed and published on 17th April 1974. In Ex. R-19 the Divisional Commissioner while sending the copy of the same has requested the Compiler, **Karnataka Gazette,** Bangalore to publish the Notification in the extraordinary gazette with the date 17th April 1974. This request further conclusively proves that the Divisional Commissioner had asked the compiler, **Karnataka Gazette** to antidate the Notification.

83. In view of the legal position with reference to the definition of 'Notification' in Sections 2(20) and the provisions of law laid down in Sections 107, 108, 109 and 202 (b) (i) (d) of the V.P. and L.B. Act of 1959, Exhibits R-2, R-3 and R-4 became legally operative only after 18th April 1974, 27th April 1974 and 25th April 1974.

84. The eighth circumstance is that Ex. R-2, R-3 and R-4 were not admittedly before the Registration Officer, R.W. 2 on the date on which he purported to have prepared and published Exhibit R-18 the supplemental list and Ex. R-6(a) including 16 members of the Taluk Development Board, Bidar.

85. We must remember that R.W. 2 had worked as an Administrator of Taluk Development Board, Bidar. He was aware of the legal position as to when the curtailment of the term of office of the Administrator the term of office of the elected members to the Taluk Development Board and the extension of the term of office of a Taluk Development Board, Bidar, would become operative. Further he knew that the Chief Electoral Officer of Karnataka State had informed the Returning Officer i. e., the Deputy Commissioner, Bidar, by his communication Ex. P-32, in clear terms that the appointment of Administrator under Section 202B of the V.P. and L.B. Act, the elected member of Taluk Board ceased to exercise the powers and perform or discharge any duties or functions under the said Act, or any other law. And therefore the elected member of the Taluk development board, Bidar, were not entitled to be registered for the electoral rolls of the Bidar Constituency. Further more his telegram Exhibit P-52 to the Chief Electoral Officer seeking instructions to include the names of the members of the Taluk Development Board, Bidar, remained without any reply. That being the position no sensible reasonable and a prudent officer would ever include the names of the sixteen members of T.D.B. Bidar in the electoral rolls and would risk the consequences that might ultimately result by taking action to prepare and publish Exhibit P-18 the draft electoral roll of the Taluk Development Board, Bidar, unless he had before him gazette notification of Exhibit R-2, R-3 and R-4 published in the Karnataka Gazette Extraordinary. Further R.W. 2 being the officiating Deputy Commissioner of Bidar could not be unaware of the Election Postponement Act being in force during that period.

Sub-section (1) of Section 3 of the Act says;

"Notwithstanding anything contained in the Act or in the rules made thereunder or in any other law or in any judgment, decree or order of any court or authority :—

(b) the term of office (including any extended term of office) of the members of the Panchayats or of the members of the Administrative Committee or any Panchayat appointed under the Act or of the members of Taluk Boards or of the Administrator appointed under the Act who were in office on the date of commencement of this Act (and whose term or extended term will expire during the period this Act is in force) shall be deemed to be extended during the period this Act is in force and every such member or Administrator shall continue to hold office during the said period.

(2) Nothing in sub-section (1) shall be deemed to preclude the supersession of any Panchayat or Taluk Board in accordance with the provisions of the Act."

This Act deemed to have come into force on the 4th day of January 1974 and remain in force upto and inclusive of 28th February 1975 or such earlier date as the State Government may be Notification, specify upon the expiry of this Act. It is clear from the above provision that notwithstanding anything contained in the V.P. and L.B. Act of 1959 the Administrator appointed under the Act and who was in office on the date of commencement of the Act, shall be deemed to be extended during the period this Act is in force and the Administrator shall continue to hold office during the said period. In view of these provisions also R.W. 2 being the head of the District administration and the returning officer would not have decided to include the names of the sixteen members of the Taluk Development Board, Bidar, unless he had the Notifications issued under Exhibits R-3, R-2 and R-4 and published in the official Gazette before him. Therefore it is reasonable to infer that R.W. 2 prepared Exhibit R-18 and published the same as per Exhibit R-6 (a) only after he had knowledge that the Notifications Exhibits R-3, R-2 and R-4 were published by the Compiler, Karnataka Gazette. This is another proved circumstance to lend support to the contention that Ex. R-6(a) was prepared and published on or after 18th April 1974 and was antidated as 17th April 1974 in line with Exhibits R-2, R-3 and R-4. Thus the Petitioner has conclusively established by cogent and reliable evidence that on 17th April 1974 only Ex. R-6 the printed electoral roll was in existence showing in the column of the Taluk Development Board members Bidar as 'Nil' and that Ex. R-6(a) was published after the last date for nomination i.e., 17th April 1974 on any date subsequent to 18th April 1974 and was antidated as 17th April 1974. Therefore, I record a finding that the names of the purported members of the Taluk Development Board, Bidar Taluk, were included in the electoral roll after the last date of nomination i.e., 17th April 1974 as pleaded by the petitioner and their names were not included on 17th April 1974 as asserted by the 1st respondent.

86. Lengthy arguments were advanced on behalf of the parties on the question that the sixteen members of the Taluk Development Board, Bidar were not entitled to vote in the election if their names were entered after 3-00 p.m. on the last date of nomination i.e., 17th April 1974. Several decisions were relied upon by the learned Advocate on both the sides in support of their arguments. In view of my finding on the 2nd issue, the alternative contentions raised on behalf of the parties on the above question needs no consideration. Therefore, no finding is recorded.

87. Issue No. 3: In view of the finding on the 2nd Issue, the 3rd issue does not survive for consideration. Accordingly the finding is recorded.

88. Now, let me take the two additional issues framed on 17th February 1976 by an order of the even date by the Court for consideration. The two additional issues read as under:

"(1) Whether the petitioner proves that the 2nd respondent secured the assisttance of the 1st respondent and other persons in the service of the Government by undue influence in getting the voters list of Taluk Board, Bidar, published after 17th April 1974 in furtherance of his election prospects and whether it amounted to corrupt practice of undue influence materially affecting the result of the case;

(2) Whether the 2nd respondent proves that the allegations in the petition are general and vague and lacked any material particulars and, therefore, do not constitute corrupt practice within the meaning of Section 123(7) of the Representation of the People Act of 1951.

The reasons for framing these additional issues are set out in the order dated 17th February 1976, passed by the Court. This order was challenged before the Supreme Court by the 2nd respondent in a Special Leave Petition. But later on it was withdrawn. Thereafter the 2nd respondent requested the Court to try the 2nd issue as a preliminary issue by I.A. No. 10 filed under Section 151 Read with Order 14 Rule 2 of the C.P.C. and Section 87 of the R.P. Act of 1951. The request was rejected by the order passed by the Court on 24th March 1976. The reasons for rejecting the request are set out in the order passed by the Court on I.A. No. 10. This order was also challenged by the 2nd respondent before the Supreme Court in a Special Leave Petition and it was later on withdrawn by the respondents. Thereafter, opportunity was given to the petitioner and the respondents to adduce evidence if any and advance arguments if any on the two additional issues. The 2nd respondent filed a Memo stating that he does not propose to adduce any further evidence on the ground that the petition does not contain material facts and full particulars of the alleged corrupt practice which is the subject matter of the 1st additional issue. Thereafter the petitioner was summoned at the instance of the 2nd respondent's request for further cross-examination but it was not done. The Additional Government Advocate for the 1st respondent has stated that the 1st respondent has no further evidence to adduce on the two additional issues. The Petitioner's advocate also submitted that he does not propose to adduce further evidence as the petitioner had already produced the evidence regarding corrupt practice alleged in the petition. Advocates for the parties finally submitted that they do not propose to address further arguments on additional issue Nos. 1 and 2. Therefore, the trial of the petition was closed and orders reserved.

89. Thus after the two additional issues quoted above were framed no further evidence was produced by the parties. But they maintained the original position in regard to their respective cases. The petitioner maintained that he has given material particulars of the alleged corrupt practice by the 2nd respondent and that he has

produced evidence to prove it. On the other hand, the 2nd respondent maintained that the petition does not contain material facts and full particulars of the alleged corrupt practice and, therefore, the petition should be dismissed in so far as that aspect is concerned.

90. It is unfortunate that on behalf of the 2nd respondent a rigid stand was taken in the course of the arguments also after the second set of issues were framed on 27th February 1974 maintaining that the petition does not contain material facts and full particulars of alleged corrupt practice and that the particulars given are either wanting or vague or incomplete. The position of law in such cases is found in the commentries of LAW OF INDIAN ELECTIONS AND PETITIONS VOLUME II, by Shri G.S.L. Srivastava, at pages 441 and 442. The commentary reads thus :—

"The common defects to be found in election petitions are either that the particulars of a corrupt practice alleged in a petition are either wanting or vague or incomplete. In non of these cases, the petition can be dismissed in limine (1) or even later on in toto (2) except possibly in circumstances to be presently, mentioned. As has been shown in Note No. 10, **Supra**, the power of High Court under Section 86(5) to allow the particulars of any corrupt practice alleged in the petition to be amended or amplified includes the power to allow particulars to be given where they are totally wanting, besides of course the power to add fresh instances to those already given and to make the particulars already given more full and complete. The concensus of opinion about the power of the Tribunal (Now the High Court) to **suo motu** order or better or other particulars is that after the amendment of the R.P. Act, 1951 in 1956, there is no such power. But a respondent can insist upon better and fuller particulars and the petitioner can also seek amendment under Section 86(5) to give more or better particulars and a situation may arise where a defective petition in the matter of particulars may be set right. It was held in Balwan Singh vs. Lakshmi Narayan (22 ELR 273) (S.C.) that where an objection is raised by the respondent that a petition is defective, because full particulars of an alleged corrupt practice are not set out, the Tribunal is bound to decide whether the objection is well founded and if the Tribunal upholds the objection, it should give an opportunity to the petitioner to apply for review to amend or amplify the particulars of the corrupt practice. In the event of non-compliance with that order the Tribunal may strike out the charges which remain vague. There may be situation where the respondent also does not raise any objection and the petitioner himself makes no attempt to put the particulars of an alleged corrupt practice in order. It is recognised that in such a case also the High Court may strike off the particular charge in respect of which no particulars have been given or the particulars are not full and complete (Abdul Rauf vs. Govind Ballabha Pant, 8 ELR 240). It need not frame issues on such charges (Nirbhay Das vs. Gulab Rai (14 ELR 187) and it should not allow evidence to be given on such charges (Kanhaiyalal Dullabharam Bhansali vs. Popatlal Mulashankar Joshi (I ELR 244).

It had often happened that evidence is led by both sides without objection by the respondent before leading evidence about want of full and complete particulars. In such cases it has been held that after the production of evidence there will be no scope for dismissing the petition or overlooking the charges for want of particulars (Thirth Singh vs. Bachitar Singh-11 ELR 192 (S.C.). Nor can an objection to that effect be raised before a higher Court (N. Paramasivan vs. Election Tribunal, 8 E.L.R. 102)."

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(1) Balwan Singh vs. Lakshmi Narain 22 ELR 273 (S.C.)

(2) Bhagwan Datt Sastri vs. Ram Ratan Singh, 11 ELR Page 448.

I am in respectful agreement with the opinion expressed by the learned Author, which is based upon several decisions of the Supreme Court and other High Courts. In the instant case, it has happened that evidence is led by both sides without objection by the respondents before leading evidence about want of full and complete particulars. Therefore after the production of evidence there was no scope for overlooking the charges of corrupt practice for want of particulars. In these circumstances it was necessary for the 2nd respondent to meet the case put forward by the petitioner.

91. Further at page 465, in the same Book the learned Author dealing with the power to enquire into the corrupt practice **suo motu** states thus:

"The Tribunal has jurisdiction to enquire **suo motu** into allegations of corrupt practice made in an election petition for the purpose of taking action under Section 99 of the R.P. Act, 1951, but it will not do so unless it is property seized of the matter and there is material which could be made the foundation of an enquiry (Shantilal Chaudhari vs. Raghuraj Singh 9 ELR 93). In fact the Tribunal (Now the High Court) can even without an allegation in an election petition take notice of a corrupt practice appearing from the admission of a respondent (Sri Krishna vs. Rajeshwar Singh-12 ELR 1) or out of the admitted or proved facts of the record Katvra Tukandas Hemraj vs. Printo Fredrick Michael 18 ELR 403) and proceed under Section 99".

The learned Author has further stated at page 458 thus:

"Having regard to the scheme of election law, an election inquiry has no doubt certain feature not in common with an ordinary judicial inquiry. As observed in Shantilal Chaudhury vs. Raghuraj Singh, the conduct of the trial of an election petition need not be left to the caprice of the parties and it ought to be the concern of the Tribunal to purge elections of all kinds of corrupt practices and the purities so as to guard the political rights of the citizens and the constituency. In Sreenivasan vs. Election Tribunal (11 ELR 93) a case decided by the Madras High Court, the difference between an election inquiry and an ordinary civil suit was brought out in the following words:—

"An election petition is not a matter in whic the only person interested are candidates who strove against each other at elections. The Public also are substantially interested in it and this is not merely in the sense that an election has news value. An election is an essential part of the democratic process. The citizens at large have an interest in seeing and they are justified in insisting that all elections are fair and free and not vitiated by corrupt and illegal practices. In a civil action the only person who are interested are the individuals arrayed as plaintiffs or defendants, but that is not so in an election petition. That is made clear from a consideration of the provisions made in the Act for the withdrawal of election petition.....In addiion to all this a specific duty is imposed on the Tribunal to find whether any corrupt or illegal practice has been practised at the election and if so by whom. In view of the manifest difference between a civil suit and an election petition it will not be right, it seems to me, to press the analogy founded on the basis of a civil suit very far when we have to deal with an election petition".

But the inquiry is a judicial proceeding and no an inquisitorial one, **vide** Teunion case (2 O'M & H p. 74) Drudsar case (1 O'M & H. p 7) and Southamotion case (1 O'M & H. p. 227) and Rangoon West G.O. 1926.

Further it is stated thus at page 459.

"In Shantilal's case the High Court observed that though political jusuce is concerned with the political right of the citizens, its administration is governed not by politics but by law, equity and good conscience and legal principles cannot be departed from (Vijay Mohan Reddy vs. Paga Pulla Reddy, 2 ELR 414)".

92. It is clear from what has been stated above that this Court has jurisdiction to enquiry **suo motu** into the allegations of corrupt practice made in an election petition and for the purpose of taking action under Section 99 of the R.P. Act, 1951. This Court can do so even without allegations in the election petition, if corrupt practice appear out of the admitted or proved facts on the record. The underlying idea is that the public are also substantially interested in it and that election is an essential part of the democratic process and the citizens at large have an interest in seeing that all elections are fair and free and not vitiated by illegal practices. Therefore, the stand taken on behalf of the 2nd respondent has ignored the position of law, relating to the trial of election petition, where corrupt practice is alleged by the petitioner against the respondent.

93. Therefore, it is necessary to determine whether the allegations in the election petition are general and vague and lacked any material particulars and whether they do not constitute corrupt practice within the meaning of Section 123(7) of the R.P. Act of 1951, as contended on behalf of the 2nd respondent.

94. It is well settled that in pleading corrupt practice, the requirements of Section 123 clause (7) should be kept in view both for the purpose of material facts and the particulars. It must be indicated whether the act of procuring or obtaining etc., any assistance was done by the candidate or his agent or by any other person with the consent of the candidate. The person with the consent of the candidate. The person whose assistance was obtained or tried to be obtained should be specified and also the manner in which he should be regarded as being in the service of the Government and covered by clauses (a) to (g). The nature of the assistance should be mentioned.

95. Before dealing with the allegations in the petition and the defence in the written statement of the respondents, it is necessary to bear in mind the meaning of material facts and material particulars as laid down in Section 83 of the R.P. Act of 1951. Section 83(1) of the Act, says :

83. Contents of petition (1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies ;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as a full statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of such practice ; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure 1908 (5 of 1908) for the verification of pleadings.

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form, in support of the allegation of such corrupt practice and the particulars thereof."

96. The meaning of the words "Material facts and full particulars" are the subject matter of a number of decisions of the Supreme Court and the High Courts in India. The law on the point enunciated by the Supreme Court in **Hari Vishnu Kamath vs. Election Tribunal, Jaipur and another (Vol. 14 ELR Page 147)** The Head Note which brings out the ratio of the decision in the above case is as follows :—

"Under Section 83 of the Representation of the People Act of 1951, as amended in 1956, the party filing an election petition has to state therein two things, **viz.,** first a concise statement of the material facts on which the petitioner relies and, secondly, full particulars of any corrupt practice that the petitioner alleges. A distinction is made between a statement of the material facts, and particulars of any corrupt practice.

The word "Material" in the expression "material facts" means, necessary for the purpose of formulating a complete cause of action and if any "material fact" is omitted the statement of claim is bad. The function of "particulars" is different. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff's case of action with information sufficiently detailed to put the defendant on his guard as to the case he has to meet and to enable him to prepare for trial."

Where all the material facts are stated in his election petition and the particulars on which the material facts are to be sustained are also stated in the petition, the particulars cannot be struck off merely because they are vague.

The power of the Tribunal to make an order for further particulars has been deleted by the Amending Act of 1956 and, the Tribunal is not now empowered to order further and better particulars, and necessarily there is to be no dismissal of the election petition as a result of disobedience.

But eventhough the Tribunal cannot now order better particulars to be supplied, it has the power to say that the particulars do not lead to an issue. In other words, the Tribunal, if it finds that a particular allegation is indefinite and vague, is entitled to say that it shall not form the subject matter of the trial. It cannot order that the averment be corrected or additional pleas be made; but it can leave it out after expressing its opinion that it is indefinite and shall not be tried. The party who has to suffer by such an opinion has the option of supplying better particulars even under the law as it now stands, but if he does not do so, it has to bear the consequences."

97. In **Kandaswami vs. Adithyan (Vol. 19 ELR 260)** (Madras High Court) referring to the provisions of Section 83(1) (a) (b) and (c) of the representation of the people Act, 1951 Ramachandra Iyer, J. observed thus :

"The section makes a distinction between material facts and particulars. Material facts are those which will go to make out the petitioner's case from the charge against the respondent. If the material facts constitute a corrupt practice,

further particulars or details would be necessary to ensure clearness. The object of insisting on such details or particulars is to prevent surprise at the trial as otherwise the respondent could not know for certain what is the real point in dispute. The function of the particulars is therefore to point out or indicate the nature of the defence expected of the respondent. It cannot however mean a disclosure of the evidence which the petitioner has to let in".

Further, he observed:

"The section itself contemplates that particulars regarding names, etc., should be specified only as far as possible. In particular circumstances, it may not be possible to furnish some of those particulars enumerated in Section 83(1). If the rule is that the names, dates and place of commission of the corrupt practice should be given in all cases, several of the election offences which would be committed in secret could never come before the Tribunals and the purity of the elections could not be maintained. I have already referred to a passage in Vol. II of Rogers on Elections, page 288, where it is stated that particulars to be ordered will vary with the circumstances."

In the light of the law as enunciated by the Supreme Court and the High Court of Madras, I will now proceed to consider whether the allegations in the petition are general and vague and lacked in material particulars.

98. As regards corrupt practice, the allegations in the petition are that after the last date of Nomination i.e., 17th April 1974 the 1st respondent with the collusion of the 2nd respondent added the names of the alleged members of the Taluk Development Board, Bidar in the list of voters by including the names in the electoral roll by anti-dating the additional list of voters as on 17th April 1974. He has alleged that 2nd respondent being a powerful and influential person in the Government took the assistance of the 1st respondent and other Government officials in furtherance of his election prospects and got the names of sixteen members of the Taluk Development Board, Bidar included in the voters list. Further, it is alleged that the 2nd respondent by exercising undue influence on the subordinate of the Government managed to get the Notification issued by the Divisional Commissioner, Gulbarga, dated 17th April 1974 and managed to get it published in the Extraordinary Gazette dated 17th April 1974 the terms of office of eleven members. Further, it is alleged that the 2nd respondent further managed to get another Notification under Section 107 of the Act modifying his name and that of Vishwanathappa as duly elected to the Taluk Board, Bidar and that of 16 members of the Taluk Board, Bidar. The petitioner, further alleged that the first respondent has acted in partisan with the second respondent and acted as his Agent from the beginning till the end of declaring his result and, therefore, he has alleged that the acts committed by the 1st and 2nd respondents amounted to corrupt practice. He has further alleged that the 2nd respondent obtained or procured the assistance of the Divisional Commissioner, Gulbarga and the 1st respondent, who are in the service of the Government in furtherance of the prospects of his election and, therefore, the election of the 2nd respondent should

be declared as void under Section 100(1) (b) and (d) of the R.P. Act of 1951. The 2nd respondent in the course of his written statement has merely denied the allegations in regard to the corrupt practice set out in the petition. He has stated that the allegations of influence and connivence referred to in paragraph 15 of the petition are patently false. He has made a counter allegation that the petitioner being the Bidar District Congress (O) President, might himself was responsible for the issue of the Notifications and that he has now sought to make out a ground for challenge having failed in the election. He has further denied that he exercised any undue influence on Government and the subordinates of the Government and got issued the Notification in question and the allegations of undue influence according to him are vague and as no names of persons on whom undue influence has been exercised has been stated in the petition and, therefore, according to him those allegations do not constitute corrupt practice within the meaning of Section 123(7) of the representation of the people Act of 1951. Further, he has pleaded that in view of the vague allegations made without giving any particulars the said allegations in para 23 cannot be looked into and are liable to be struck off.

99. The 1st respondent has also denied the allegations of corruption alleged against him. He has also denied the allegations that the 2nd respondent with his influence canvassed the officer of the administration of the State and managed to get the Notifications issued curtailing the term of office of the Administrator and extending the term of office of the members of the T.D.B. Bidar and Municipal Councillors. Further, he has characterised the allegation of anti-dating as utterly false, frivolous and mischievous.

100. The contention of Mr. K. R. D. Karanth is that the allegation in the petition regarding corrupt practice are general and vague in nature and that they should not be looked into and they are liable to be struck off. He urged that the names of officers, the time, date and place of the commission of corrupt practice by the 1st respondent has not been given and, therefore, the allegations do not constitute corrupt practice as defined under Section 123(7) of the representation of the people Act of 1951.

101. It is not correct to say that the allegations regarding corrupt practice stated in the petition are general and vague in nature. The petitioner has clearly and definitely stated that the 1st and the 2nd respondents colluded and got the supplemental voters list (Ex. R-6) (a) prepared and published after the date of nominations by anti-dating it. Already a finding is recorded to the above effect. It is true that the names of the 1st respondent and the Divisional Commissioner are not set out in the petition. But with reasonable certainty it can be ascertained as to who was the Returning Officer and the Divisional Commissioner during the conduct of election. Further the manner in which the alleged

corrupt practice was committed was within the knowledge of R.W. 1 who is benefited by it and R.W. 2 and R.W. 3 who rendered assistance. What is alleged in the petition is not like any pamphlet defaming a candidate is published or where openly the candidate carried the voters in fast moving conveyances, etc. The type of corrupt practice alleged in the petition was not within the knowledge of the petitioner or the public and therefore it is not possible for the petitioner to know all the details of what respondents 1 and 2 did in connection with the publication of supplemental additional list of voters Ex. R-6(a) at the instance of R.W. 1. These were facts within the personal knowledge of the 1st and the 2nd respondents. As observed by the learned Judge of the Madras High Court in 19 ELR page 260, the particulars required under Section 81(1) may necessarily vary according to the nature of the corrupt practice alleged in the petition. The section contemplates that particulars regarding names etc., should be satisfied only as far as possible in particular circumstances. It may not be possible to furnish some of the particulars enumerated in Section 81(1) and if it is insisted that the name, date, time and place of corrupt practice should be given in a case, several election offences which would be committed in secret could not have come before the Tribunals and the purity of the election could not be maintained.

102. Therefore, upon a careful consideration of the allegations and the counter allegations, I am of the opinion that in the instant case the particulars furnished are sufficient to put the respondents on their guard as to the case they had to meet and enable them to prepare for the trial. Therefore, it is not possible to say that the particulars are general and vague in nature and they do not constitute corrupt practice as defined in Section 123(7) of the R.P. Act of 1951. Therefore, I hold that the 2nd additional issue in the second set in the negative.

103. Now the next question for determination is whether the petitioner proves that the 2nd respondent secured the assistance of the 1st respondent and persons in the service of the Government by undue influence in getting the voters list of T.D.B., Bidar published after the last date of nomination **i.e.,** 17th April 1974 in furtherance of his election prospects and whether it amounted to corrupt practice of undue influence materially affecting the result of the election.

104. The crucial issue for determination in the 2nd set of additional issue is the 1st issue. It reads :

" Whether the petitioner proves that the 2nd respondent secured the assistance of the 1st respondent and other persons in the service of the Government by undue influence in getting the voters list of Taluk Board, Bidar, published after 17th April 1974 in furtherance of his election prospects; and whether it amounted to corrupt practice of undue influence materially affecting the result of the case ".

The word 'case' is a clerical mistake in this issue. It must be read as 'election'.

105. In Motilal vs. Mangal Prasad (Vol. 25 ELR 425) the Allahabad High Court has observed thus:

"We think that the word 'obtain' in Section 123(7) has been used in the sense of the meaning which connotes 'purpose' or 'effort' behind the action of the candidate. The word has not been used in the sub-section in the sense of a mere passive receipt of assistance without the candidate being even conscious of the fact that the assistance has been rendered. In order to bring the case under sub-section (7) it must be shown that the candidate did some effort or performed some purposeful act in order to get the assisttance. The receipt of assistance must be the result of either purpose or effort which implies that the getting of the assistance should be the result of some conscious section of the candidate and not a mere passive happening of getting the assistance. It further appears to be unreasonable to impute to the Legislature an intention that the election of a candidate had no knowledge even of the fact that some persons in the service of the Government had taken into his head to assist a particular candidate. This would be inconsistent with the entire scheme of the Act, as it stands after its amendment by Act No. XXVII of 1956."

It is clear from the above decision that obtaining or procuring of assistance connotes a positive act on the part of the candidate and not a mere passive act. In order to prove that the candidate procured assistance it must be shown that the candidate did some effort or performed some purposeful act in order to get the assistance. Thus, the word 'obtain' also connotes the purpose or effort behind the action of the candidate and consequently to bring the case under sub-clause (7) of Section 123, it must be shown that the candidate did some effort or performed some purposeful act in order to get the assistance. The receipt of assistance must be the result of some conscious action of the candidate and no mere passive happening of getting the assistance. Further, in order to constitute corrupt practice under Section 123(7), the obtaining or procuring of assistance of the person in Government service has to be with the object or with the intention of furthering the prospects of the candidate's election. While dealing with the standard of proof, the Supreme Court in **Jagdev Singh vs. Pratab Singh** (AIR 1965 SC 182) has enunciated the law as follows:—

"It may be remembered that in the trial of an election petition, the burden of proving that the election of a successful candidate is liable to be set aside on the plea that he was responsible directly or through his agents or with his consent for its practice not by mere preponderance or probability, but by cogent and reliable evidence beyond any reasonable doubt, the petition must fail ..... And once the standard of proof in an election petition is assimilated to that in a criminal case, and in as much as by Section 90(2) of the Representation of the People Act, the provisions of the Evidence Act are made applicable in all respects to the trial of an election petition, it would follow as a necessary corollary that as a salutary rule of practice, though not as a rigid rule of law, a finding of guilty on a charge of corrupt practice, should not normally be based on the uncorroborated testimony of an accomplice, be he a direct participant in the corrupt practice or one who had aided or abetted the commission of that corrupt practice; and further, that corroboration must come from an independent source,

that is to say, the evidence of one accomplice would not be sufficient, as rule to corroborate the evidence of another."

106. The evidence in support of a charge of corrupt practice need not necessarily be direct. But it is well settled that a circumstantial evidence and the inference deducible therefrom must be such as to lead to the only reasonable conclusion of the commission of the corrupt practice alleged. No conjucture of surmise, however, attractive or even plausible should take the place of proof, and if two equally reasonable inferences or conclusions are possible, one innocent and the other guilty the former should normally prevail. See **Lachman Singh Gill vs. Bara Prakash Kaur** (22 ELR 249). **Rampphal vs. Brahma Prakash** (AIR 1962 Punj 1291); **Ajmad Ali vs. Nazhul Haque** (AIR 1960 Assam 81-21 ELR 345). In **Mohan Singh vs. Bhanwarlal** (AIR 1964 SC 1266), it was held by the Supreme Court that the onus on a petitioner to prove corrupt practice was not discharged on proof of mere preponderance of probability, as in the trial of a civil suit and corrupt practice must be established beyond reasonable doubt by evidence which was clear and unambiguous. In the same case when it was before the Madhya Pradesh High Court (**Mohan Singh vs. Bhanwarlal** (AIR 1964 MP 137), it was observed that the measure of certainty that is required in cases in which the standard of proof of criminal cases is applicable is that the Court should be satisfied beyond reasonable doubt. But a doubt must be a reasonable doubt. It must not be fanciful or a doubt based simply on a catch phrase anything may happen) ".

107. Now the evidence may be examined bearing the approach stated above the evidence in mind. The evidence on record is both oral and circumstantial. The several links in the chain of circumstantial evidence are:

(1) R.W. 2 meeting P.W. 3 in Bangalore on 15th April 1974.

(2) Presentation of Ex. P-23 to the 1st respondent by R.W. 2 on 16th April 1974 and the endorsement made by R.W. 2 on Ex. P-23 as per Ex. P-23(a).

(3) Sudden appearance of R.W. 3 on 17th April 1974 at 6-00 p.m. in the Office of the 1st respondent R.W. 2 with original of Ex. R-3.

(4) Rumers set afloat by the 2nd respondent on 17th April 1974 about the inclusion of the 16 members of the T.D.B. Bidar

(5) Knowledge of the 2nd respondent about the publication of supplemental list of Bidar T.D.B. Voters' even before 3-00 p.m. on 17th April 1974.

(6) Want of knowledge about it in the mind of R.W. 3 the Assistant Returning Officer till 5-30 p.m.

(7) Visit of 1st respondent to Gulbarga on the evening of 17th April 1974.

(8) Divisional Commissioner issuing the orders/as per Ex. R-17 notifying the names of 1st respondent and one Sri Viswanath on 15th April 1974.

(9) Further Divisional Commissioner issuing another order as per Ex. P-19 on 17th April 1974 extending the term of office of the eleven members of T.D.B. Bidar and requesting the compliler of **Karnataka Gazette** to publish the same anti-dating the notification.

(10) Manipulations in Ex. R-7, Sales Register of Electoral Rolls to make it appear that both Ex. R-6 and Ex. R-6 (a) were sold on 16th April 1974.

(11) Want of satisfactory explanation on the part of respondents as to why and at whose instance P.W.3 went to Bidar with the original of Ex. 16 and why and at whose instance the Divisional Commissioner issued Ex. R-17 on 15th April 1974 and Ex. R-19 on 17th April 1974, and requested the Compiler to date the Notification as 17th April 1974 and not the date of their actual publication.

(12) The evidence of circumstances already discussed in para Nos. 42 to 84 **supra.**

108. The allegation in the petition is that the 2nd respondent procured the assistance of the 1st respondent and got the names of sixteen members of the Taluk Development Board, Bidar, included in the electoral roll after the last date of nomination by anti-dating it. It is alleged that the 2nd respondent being a powerful and influential person in the Government took the assistance of the 1st respondent and other Government Officials in furtherance of his election prospects and got these names included in the supplemental list Ex. R-6 (a). The counter allegation of the 2nd respondent is that the petitioner being the President of the Bidar District Congress (O) might be himself responsible for the issue of the Notifications and that he is now sought to make it a ground of challenge having failed in the election. He has merely denied the allegation that the voters list Ex. R-6(a) was anti-dated as 17th April 1974 and he has also denied exercise of any undue influence on the Government and the subordinates of the Government and got issued the Notification dated 17th April 1974 and that the Notifications were issued in the exercise of the powers vested in the Commissioner.

109. The petitioner, P.W. 11 in the course of his evidence has stated that the Returning Officer was responsible for anti-dating Ex. R-6(a) and he has suspected that the 2nd respondent who was a sitting member of the Legislative Council must have induced the Returning Officer to anti-date Ex. R-6(a), since the 2nd respondent belongs to Congress (R) party and he is an influential leader of the party and that he wielded influence in the Government and brought into existence Exhibits R-2, R-3 and R-4. The 1st respondent's counsel has not cross-examined the petitioner P.W. 11 on this point. It is elicited that the petitioner P.W. 11, did not complain about the inclusion even after the election. In the course of the cross-examination of the 2nd respondent also, there is no challenge to the evidence given by the petitioner P.W. 11. The 2nd respondent who has been examined as R.W. 2 has not denied in the course of his examination-in-chief that he procured the assistance of the 1st respondent in getting Ex. R-6(a) published after the last date for filing nomination, nor has he denied that he procured the assistance of the Divisional Commissioner and other subordinate officers in getting the relevant Notifications relating to the extension of eleven members of the Taluk Development Board, Bidar and also notifying the election of

himself and another member. But what he has stated in the course of his examination-in-chief is :

"I was in the Deputy Commissioner's Office on that day between 2 p.m. and 3 p.m. I made enquiries with the Assistant Returning Officer asked me to wait for some time for the sale of the supplementary copies. I did not wait for the purchase of the supplementary electoral roll on that day as I had to go for the scrutiny of the nomination papers fixed on 18th April 1974 and then I proceeded to my village".

Further he has admitted that :

"With regard to the inclusion of the members of the Bidar Taluk Board, I had made a representation on 11th April 1974 to the Government of Karnataka. Similarly on 16th April 1974 myself and another member of the Taluk Development Board, Bidar, made a representation to the Minister for Social Welfare and Community Development at Bidar for inclusion of the members of the Bidar Taluk Development Board in the Voters' list of local authorities constituency. Ex. P-23 is the representation given to the Minister. The Minister has endorsed on his application as per Ex. P-23(a) and that it is in the handwring of the Minister with his signature."

110. He admits that on 16th April 1974 one Mr. Sangappa (R.W. 2) was the Returning Officer for the Local Authorities Constituency and one Easavannachar (R.W. 3) was the Assistant Returning Officer. He has further stated that on 11th April 1974 he had given a representation to the Divisional Commissioner to notify the election of the members of Ranjol Kheny Constituency and he had also given a representation to the Government. At that time he had no idea of contesting the election for the Legislative Council from the local authorities constituency ; because he was one of the members elected to the Taluk Development Board, he gave a representation to the authorities to notify him and other members of the Taluk Development Board, Bidar. He wanted all the sixteen members of the Taluk Development Board, to be included in the Taluk Development Board, Bidar, as members of the Taluk Development Board and voters to the Local Authorities Constituency. He has stated that he was not aware whether any other member had given similar representation to the authorities. He has also stated that he cannot say but for his representation the names of others would not have been included as voters. He has further admitted that he had sent a copy of the representation he made to the Minister on 16th April 1974 to the Returning Officer who was the Deputy Commissioner and the Chief Electoral Officer. He has further stated that on 15th April 1974 he was at Bangalore and from Bangalore, he proceeded to Hyderabad and from Hyderabad he proceeded to Bidar and to his village on 15th April 1974 and 16th April 1974. On 16th April 1974 he went to Gulbarga late in the night and at early in the morning of 17th April 1974 he returned to Bidar. He has denied that he met the Divisional Commissioner, Gulbarga, on 1st April 1974 and 17th April 1974 and further he has deems that he went to the Divisional Commissioner's Office during that Period. He has further stated that he gave the

petition Ex.P-23 to the Minister on the afternoon of 16th April 1974 and thereafter he went to Gulbarga late in the night. He admits that he met the Assistant Returning Officer on 17th April 1974 between 2.35 p.m. and 3.00 p.m. and spoke to him about the supplementary voters' list for the local authorities constituency. He clearly admits that for the first time he got the supplementary copy of the voters' list which included the sixteen members of the Taluk Development Board, Bidar only on 18th April 1974. He further stated that he was not aware whether Exhibits R-2, R-3 and R-4 were in existence on 17th April 1974.

111. It is clear from the evidence of R.W.1 that he started making efforts to get the names of the sixteen members of the Taluk Development Board, Bidar, included in the electoral roll by sending representation to the Government giving a representation in this behalf to the Minister on 16th April 1974 as per Ex.P-23 after he failed to get party ticket to contest from Assembly Constituency to the Legislative Council. It is significant to note that the 2nd respondent was making last minute efforts at the nick of the moment close on the last day of nomination to get the names of sixteen members of the Taluk Development Board, Bidar, included in the voters list. R. 2 has tried to give a seal of authority to the endorsement made in Ex. P-23 as per Ex. P-23(a) by stating that it was endorsed by the Minister for Community Development and that it is in his handwriting and in his signature. But the evidence of R.W. 2 that Ex. P-23 was presented to him by the 2nd respondent on 16th April 1974 and that he made the endorsement as per Ex. P-23(a) and that it is in his handwriting gives a direct lie to the evidence of R.W. 2. Thus, it is clear that the 2nd respondent made an attempt to suppress the fact that he approached the 1st respondent in connection with the inclusion of sixteen members of the T.D.B. Bidar, in the electoral roll. Further, his evidence that Ex. P-23 was given to the Minister and that the Minister endorsed on it under his signature is patently an untruthful statement perhaps made with the intention of suppressing the fact that he approached R.W. 2 in connection with the inclusion of the 16 members of T.D.B., Bidar.

112. It is unfortunate that respondent-2 who is a member of the legislative council should make an untrue statement by bringing into picture the name of the Development Minister in the Government of Karnataka who had nothing to do with the election matters and to make it appear that the endorsement on Ex. P-23 was made by the Minister.

113. Further the evidence of R.W. 1 is that he met the Assistant Returning Officer on 17th April 1974 between 2-30 p.m. and 3 p.m. and spoke to him about the supplementary voters' list of the local authorities constituency and came to know that the supplemental list was to be published. But the Assistant Returning Officer R.W. 3

has in clear words stated that before 5-30 p.m. on 17th April 1974 he had no information about the inclusion of the names of the 16 members of the T.D.B., Bidar in the electoral roll. Thus, it is clear that even before the Assistant Returning Officer could get the information about the possible inclusion of the names of the members of the T.D.B. R.W. 1 had knowledge of the possibility of the publication of the supplemental voters' list relating to the Taluk Development Board, Bidar. Further he has asserted in clear terms that he knew that those 16 members would be voters at the election to the local authorities constituency, as these sixteen members were the T.D.B. members on 17th April 1974. Hhus, it is clear that even before the Assistant Returning Officer RW 3 could have information about the publication of a supplementary voters' list of Taluk Development Board, Bidar, R.W. 1 was aware of it. This is attributable only to his efforts in getting the supplemental list published and nothing else. There is no truth in his assertion that the authorities would have published it even without his representation. This his own evidence discloses that he was making conscious efforts to get the supplemental voters' list published. R.W. 2 has failed to prove his allegation that the petitioner was responsible to get the notification published.

114. What is stated in Ex. R-7(b) the Accounts (Book) relating to the sale of Ex. R-6(a) is clear manipulation to show that the supplementary electoral roll was sold on 16th April 1974 to the 1st respondent. If the supplementary electoral roll as stated by R.W. 1 was sold to him on 18th April 1974 or on 19th April 1974 he would have told the Clerk to make an entry for the purchase of the supplementary electoral roll on one of these dates. He would not have signed the entry relating to 16th April 1974 unless he was a party to the manipulation of the accounts which was intended to make it appear that the supplementary roll was sold on 16th April 1974 itself.

115. R.W. 1 admitted that he had gone to Gulbarga on 17th April 1974. But denied having met the Divisional Commissioner. But, curiously enough Ex. P-10 the Notification extending the term of office of eleven members of the Taluk Development Board is purported to have been issued on that day with a note to the Compiler of **Karnataka Gazette** that the Notification should be published anti-dating it as 17th April 1974. R.W. 1 has not stated the purpose for which he was in Gulbarga on 17th April 1974. It is reasonable to infer that though R.W. 1 denies of having met the Divisional Commissioner, his effort alone was responsible for the Divisional Commissioner to issue such a Notification and give a direction to the Compiler of **Karnataka Gazette** to publish it by anti-dating it.

116. Even the arrival of P.W. 3 by Air to Hyderabad and go to Bidar by Car and meet the 1st respondent at 6-00 p.m. and then

proceed with the original of Exhibit R-3 tot the camp of the Minister at Gulbarga in the night at 8-30 p.m. is shrouded in mistry. He has given evidence that on 17th April 1974 he left Bangalore for Bidar at 3-00 p.m. by plane to Hyderabad. Het reached Hyderabad at 4-00 p.m. and left for Bidar by car. He was intimated to go by car and a car was ready at Hyderabad. He travelled by that Car and reached Bidar at 6-00 p.m. He did not find the Minister as he had already gone to Gulbarga. He then proceeded to Gulbarga. At Bidar he made enquiries with the Deputy Commissioner, Bidar ; *viz.*, the 1st respondent. He did not talk to the Deputy Commissioner about the local authorities constituency as he was not concerned with it. He does not remember at that time whether he handed over any document to the Deputy Commissioner, Bidar. He was entrusted with the papers related to the curtailment of the term of office of the Administrator of T.D.B. Bidar. He reached Gulbarga at 8-30 p.m. with that paper, met the Minister and handed over the original of Exhibit R-3 to the Minister at Gulbarga. Ex. R-3 was a typed copy. He remained in Gulbarga at that night. P.W. 3 does not say why and at whose instance he made the Hyderabad trip by Air and Car to Bidar and on to Gulbarga. He has categorically stated that he did not discuss with R.W. 2 anything about the local authorities constituency, while R.W. 2 has stated in his evidence that P.W. 3 discussed with him about it and handed over a copy of Ex. R-3. But, P.W. 3 himself does not remember whether he handed over any document to R.W. 2 on that evening. In this connection reference may be made to the evidence of R.W. 1 who has stated that he was in Bangalore on 15th April 1974 and from Bangalore, he proceeded to Hyderabad and from there to Bidar. He admits that he met P.W. 3 during the 2nd week of April 1974, in connection with the Bidar Taluk Development Board. He denies of having met him at Bidar on 17th April 1974. In the absence of any explanation as to why and at whose instance P.W. 3 went to Bidar and on to Gulbarga, it is reasonable to infer that the meeting of R.W. 1 with P.W. 3 on 15th April 1974 in connection with the Bidar T.D.B., that he had approached him in connection with the Notification relating to the curtaiment of the term of the office of the Administrator of Bidar Taluk Development Board is another instance of conscious effort on the part of R.W. 1 to get the names of the sixteen members of the Taluk Development Board, Bidar, included in the supplemental voters list Ex. R-6(a). Besides, unimpeachable circumstances discussed above to show the conscious effort on the part of R.W. 3 to secure the assistance of Gazetted Officers like R.W. 2, P.W. 3 and the Divisional Commissioner, there are other circumstances, which have been discussed in paragraphs, goes to show that as to how the three notifications Exhibits R-3, R-2 and R-4 came to be published for the inclusion of sixteen members of the Taluk Development Board, Bidar at the instance of R.W. 1. R.W. 2 the Returning Officer, P.W. 3 the Under Secretary to the Government of Karnataka and the then Divisional Commissioner, Gulbarga, had

absolutely no personal interest in the manipulations connected with the publication of Exhibits R-16, R-17 and R-19 which correspond to the Gazette Notifications Exhibits R-3, R-2 and R-4. The only reasonable inference as contended by the petitioner is that the 2nd respondent brought pressure over these officers and by influencing them he was able to get the draft voters' list Ex-R-18 and its cyclostyled copy Ex. R-6(a), the supplemental voters' list published by R.W.2 in furtherance of his election prospects. These are conscious efforts on the part of the 2nd respondent and it is not mere passive reception of assistance he procured or obtained in furtherance of his prospects of his election. The conduct of election appears to be neither free nor fair. Thus the petitioner has fully and satisfactorily established the several links in the chain of circumstantial evidence, which gives rise to a reasonable inference that the 2nd respondent secured the assistance of the persons in the service of the Government by undue influence in getting the voters' list of Taluk Development Board, Bidar, published after 17th April 1974 in furtherance of his election prospects and thus has established corrupt practice under Section 123 (7) of the R.P. Act of 1051 beyond all reasonable doubt. The 1st issue in the second set of Additional issues is held accordingly.

117. The next issue for determination is the 8th issue as originally framed and two additional issues which were framed by an order dated 27th October 1975 and the last part of the 1st additional issue framed on 17th February 1976, which related to the question whether the result of the election was materially affected. The 8th issue reads thus :

"Whether all or any of the aforesaid illegalities and irregularities pleaded by the parties, even if proved, have materially affected the result of the election".

118. The above issue raises the question whether the result of the election in question is materially affected. In view of the finding already recorded on the 1st issue in the second set of additional issues framed on 17th February 1976 the sixteen voters of the Taluk Development Board, Bidar are void votes which are exercised in the election. Therefore by improper resumption of those votes the result of the election is materially affected. I hold the eighth issue accordingly.

119. Next we come to the 1st and the 2nd issues in the 1st set of additional issues framed on 17th October 1975. They read as under :

(1) In the event of the 2nd respondent's election being set aside, is the petitioner entitled to a decleration as duly elected ?

(2) In the event of the Court holding that the reception of the 16 votes cast by the members of the Bidar T.D.B. are void and invalid, wheher the 2nd respondent is entitled for recount and declaration as duly elected.

120. Before dealing with this question, it is necessary to bear in mind the ground for declaring another candidate duly elected under Section 101 of the Representation of the people Act of 1951, which lays down the grounds on which a candidate other than the returned

candidate can be declared elected in the place of the returned candidate. This section reads thus :

"101. Grounds for which a candidate other than the returned candidate may be declared to have been elected :—

If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion :

(a) that in fact the petitioner or such other candidate received a majority of valid votes ; or

(b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the High Court shall after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected."

121. The grounds for declaring an election to be void are laid down in Section 100 of the R.P. Act, 1951. It says that subject to the provisions of sub-section (2) if the High Coert is of opinion that any corrupt practice has been committed by a returned candidate or his election agent of by any other person, with the consent of a returned candidate or his election agent, the High Court shall declare the election of the returned candidate void. The commission of corrupt practice by itself is sufficient for declaring the election of the returned candidate as void. I have already held that the 2nd respondent is guilty of corrupt practice while dealing with the first additional issue in the 2nd set of additional issues.

122. In the instant case the petitioner in addition to calling in question the election of the returned candidate claimed a declaration that he himself has been duly elected. Thus, he has invoked the aid of ground (b) of Section 101 of the R.P. Act of 1951. The petitioner is requited to prove that, but for the votes obtained by the returned candidate by corrupt practice the petitioner would have obtained a majority of valid votes. Therefore, now, it is necessary to consider the evidence to determine whether the petitioner has proved that but for the votes obtained by the returned candidate by corrupt practice the petitioner would have obtained a majority of the valid votes.

123. In *Phim Rao* vs. *Ankush Rao* (22 ELR 385) it was held that the petitioner cannot be declared elected unless there is evidence to show how many votes were obtained by the respondent by the commission of corrupt practice and if suh votes are excluded, the petitioner would have a majority of the valid votes.

124. In *T. Nagappa* vs. *T. C. Basappa* (11 ELR, 203) the Supreme Court held thus.

"The appellant. the returned candidate secured 8093 votes, the 1st respondent 8059 votes and the next candidate got 6239 votes, and it was found that 60 votes were recorded by voters transported by the appellant and had there to be rejected, and the Tribunal not duly declared the election of the appellant void, but declared the first respondent as duly elected. It was

held that, in as much as, even if all these 60 votes had been cast in favour of a candidate other than the appellant the first respondent would have obtained a majority of votes the decision of the Supreme Court in *JAMUNA PRASAD* vs. *LACHHI RAM* (10 ELR 120) was not applicable and the first respondent was rightly declared as duly elected."

In view of the ratio of the above decisions it is necessary to examine the evidence to show how many votes were obtained by the 2nd respondent by the commission of corrupt practice.

125. The petitioner P.W. 11 has stated that he secured fifty-four votes and the second respondent secured sixty-four votes in the election. He has stated that sixteen members of the Bidar Taluk Development Board exercised their franchise and that none of those voters voted in his favour, but they had voted in favour of the 2nd respondent. Further he has stated that the 3rd and the 4th respondents secured 'Nil' votes and were defeated. He has stated that if sixteen members from the Bidar Taluk Development Board had not been permitted to vote in the election his success would have been certain.

126. In the course of cross-examination he has stated thus :

'r It is not may imagination that I would have succeeded if the voters from Bidar Taluk Development Board had not been permitted to vote in the election. Before the election I contacted some of members of the Bidar Taluk Development Board. They frankly told me that I should not try to get their votes as the life of their T.D.B. was revived by the efforts of the 2nd respondent. Therefore, I presume that all the voters of Bidar Taluk Development Board had voted for the 2nd respondent."

He has denied the suggestion that two persons *viz.*, Shantappa and Narayana Reddy the members of the Taluk Development Board, Bidar, belong to Congress (O) party. He has also denied the suggestion that 3 or 4 members of the Taluk Development Board, Bidar were sympathizers of his party. He has stated that Taluk Congress (O) Committee was not in existence.

127. The 2nd respondent, R.W. 1 has stated in his examination-in-chief that on 16th April 1974 himself and another member of the Taluk Development Board met and gave a representation to the Minister for Social Welfare and Community Development at Bidar for inclusion of the members of the Bidar Taluk Development Board in the voters list of the Local Authorities Constituency. Exhibit P-23 is the representation given to the Minister to which a reference has already been made. He has admitted that he secured a total number of sixty-four votes and the petitioner secured a total number of fifty-four votes. Respondents 3 and 4 got nil votes and two votes were declared invalid. In the course of cross-examination he has admitted that he wanted all the sixteen members of the Taluk Development Board, Bidar, to be included in the supplementary voters list to the local authorities constituency. He has also stated that he knew all the members of the Taluk Development Board, Bidar, and

that a few of them worked in his election. He admits that except 2 or 3 Congress (O) members all others might have worked for his election.

128. The petitioner's evidence discloses that all the sixteen members of the Taluk Development Board, Bidar, belong to the party of the 2nd respondent and that all of them voted for the 2nd respondent on account of the efforts made by him to revive the life of the Taluk Development Board, Bidar. We must remember that this evidence is brought out in cross-examination of the petitioner. It is held above that on account of the conscious efforts of the 2nd respondent the inclusion of sixteen members of the Taluk Development Board, Bidar, in the supplemental voters' list was made by the 1st respondent, R.W. 2. R.W. 1 admits that out of sixteen members of the Taluk Development Board, Bidar, except two or three members the rest of them worked in his election. From the above admissions of R.W. 1 coupled with the evidence given by the petitioner in the course of cross-examination and also having regard to the human behaviour under certain set of circumstances it is reasonable to infer that all the sixth voters of the Taluk Development Board, Bidar, had recorded their votes in favour of the 2nd respondent. If these sixteen votes had not been cast in favour of the second respondent, the petitioner would have obtained a majority of votes. The sixteen votes secured by the returned candidate as a result of commission of corrupt practice cannot go to his credit and have to be excluded from the total number of votes secured by him. If that is done, the votes validly secured by the 2nd respondent would be reduced to forty-eight and the difference between the votes secured by the petitioner and the 2nd respondent would have been six votes.

129. Grounds for declaring election void and inclusion of names of electors in electoral rolls in contravention of Section 23(3) of the R.P. Act of 1950 and reception of such votes materially affecting election of returned candidate is clearly laid down in *Baidyanath Panjra* vs. *Sita Ram Mahto and others* (A.I.R. 1970 SC 314) at para No. 10 of the Judgement as under:—

"It was next urged that even if we hold that, in including fresh electors in the electoral roll on April 27, 1968, the electroal registration officer contravened Section 23 (3) of the 1960 Act, the same cannot be made a ground for invalidating the election as a contravention in question does not come within the purview of sub-section (1) of Section 100 of the Act. This contention again does not appear to be sound. Clause (d) (iii) of Sub-Section (1) of Section 100 of the Act provides that if the High Court is of the opinion that the result of the election in so far as it concerns the returned candidate has been materially affected by improper reception refusal or rejection of any vote which is void, it shall declare the election void. We have earlier come to the conclusion that the electoral registration officer had no power to include new names in the electoral roll on April 27, 1968. Therefore votes of the electors whose names were included in the roll on that date must be held to be void votes. That conclusion satisfies one of the conditions prescribed in Section 100(1) (d). We have now to see whether the other conditions prescribed in that clause namely whether the

High Court on the material before it could have been of the opinion that the result of the election in so far as it concerned the returned candidate has been materially affected because of the reception of the votes which are void. The High Court elaborately considered that question. It has examined each one of the disputed votes and has come to the conclusion that if these votes had been excluded, the valid votes received by the contesting candidates in the first count would have been as follows :—

Appellant	..	32
Respondent No. 2	..	46
Respondent No. 3	..	23

In the second count after the elimination of the third respondent and taking into consideration the second preferences given by the electors who gave their first preference to him, the following would have been the position :—

Appellant	..	43 Votes and
Respondent No. 2	..	57 Votes.

No material was placed before us show that this conclusion was wrong. There was some controversy about two votes but we do not think it necessary to go into the same as any decision as regards their validity will not affect the final conclusion ".

The above decision lays down that the votes of the electors whose names were included in the roll after the last date for filing nomination most be held to be void votes and reception of such votes in so far as the result of the returned candidate is concerned has been materially affected.

130. In *Vatal Nagaraj* vs. *R. Dayananda Sagar* (A. I. R. 1975 SC 349) the Supreme Court while observing that Court do not elect candidates whom the constituency has not favoured and the normal democratic process cannot be by-passed conveniently on the score of corrupt pratice by the rival except in those exceptional cases whom Section 101 stands fulfilled. Krishna Iyer, J. observed as follows:—

"In the insistent requirement of the Section are that firstly returned candidate must have obtained, votes by the operation of corrupt practices; secondly, such tainted votes must be quantified with judicial assurance and, thirdly, after deduction of such void votes, the petitioner or other candidate must be shown to have secured a majourity of the valid votes. In the present case, the decisive factor is the satisfactory proof of the number of votes, if any, attracted by the appellant into his ballot box by the corrupt means. How many voters were lured for certain by the expenditure of several thousand rupees more than is sanctioned by the law? Did the compaigning in those hired cars snatched votes at all. Did deleterious leaolets draw into Nagaraj's net a specific set of voters at all? To capsule the enquriy, how many votes were definitely obtained by the use of each corrupt practice? This hinges not on mystic maybes and vague imponderables and prejudice to prospects but on tangible testimony that a number of persons, arithmetically assessed, swung towards and probably voted actually for the returned candidate, directly magnetised by the corrupt practice, so that one could positively predicate those votes as having been obtained.... by corrupt practices. This clear nexus is of critical importance. Happy speculation, hypothetical possibility and clairvoyant surmise, however imaginatively and objectively made, cannot displace this drastic requirement. Where, for instance a certain number of persons, in violation of the legal ban, have been transported by the

candidate and they have been shown, with fair assurance, to have cast their votes in his favour of where specific cases of false personation or double voting at the instance of the candidate or his agents has occurred and the margin of difference between the victor and the nearest vanquished is narrow and the gap is more than made up by the legally procured votes, the case for the application of Section 101 will surely arise. Courts do not elect candidates or sign into parliamentary seats those whom the constituency has not yet favoured. The normal democratic process cannot be by-passed conveniently on the score of corrupt practices by the rival except in those exceptional cases where Section 101 stands fulfilled. You must win not only an election Petition but an election itself."

131. It is clear from the above decision that where there is margin of difference between the victor and the nearest vanquished is narrow, and the gap is more than made up by the illegally procured votes, the case for application of Section 101 will surely arise. In the instant case also the margin of difference between the 2nd respondent and the petitioner is narrow and the gap is more than made up by the illegally procured votes by the 2nd respondent.

132. Further, in *Viswanatha Reddy* vs. *Konappa Rudharappa Nadgouda and Another* (AIR 1969 S.C. 604) the Supreme Court while dealing with the case of a returned candidate was found to be under statutory disqualification on the date of filing nomination paper, observed in Para 13 of the Judgment as follows :—

"The view that we are taking is consistent with the implication of Cl. (b) of Section 101 When in an election petition which complies with Section 84 of the Act, it is found at the hearing that some votes were obtained by the returned candidate by corrupt practices the Court is bound to declare the petitioner or another candidate elected if, but for the votes obtained by the returned candidate by corrupt practice, such candidate should have obtained a majority of votes. In cases falling under clause (b) of Section 101 of the Act requires merely proof of corrupt practice, and obtaining votes by corrupt practice ; it does not require proof that the voters whose votes are secured by corrupt practice had notice of the corrupt practice. If for the application of the rule contained in Cl. (b) notice to the voters is not a condition precedent, we see no reason why it should be insisted upon in all cases under Cl. (a). The votes obtained by corrupt practice by the returned candidate proved to be guilty of corrupt practice, are expressly excluded in the computation of total votes for ascertaining whether a majority of votes had been obtained by the defeated candidate and no fresh poll is necessary. The same rule should, in our judgment, apply when an election there are only two candidates and the returned candidate is found to be under a statutory disqualification existing at the date of the filing of the nomination paper."

In the light of the enunciation of the law by the Supreme Court in the above cited decisions and also in view of my finding that the petitioner would have secured majority of votes, but for the votes obtained by the returned candidate by corrupt practices, I hold on the 1st issue in the first set of additional issue that the petitioner is entitled to be declared as duly elected.

133. In view of my finding on the above issue the second issue in the first set of additional issue do not survive for consideration.

134. There is some controversy about one vote casted in favour of the petitioner and that will be considered in the following issue, *viz.*, the 7th issue, which reads thus :

"Whether one ballot paper which did not contain a proper mark to indicate the intention of the voter had been counted in favour of the petitioner and whether such vote should be excluded."

135. The 2nd respondent has taken the ground in his written statement that among the votes counted for the petitioner, one vote counted for the petitioner did not contain any numerical figure either international, Indian Numerical or in the Roman form, but it contained a horizontal mark and hence it ought to have been rejected as an invalid vote as it did not contain numerical figure as provided by the Conduct of the Election Rules.

136. In the course of the objection statement to the recrimination petition the petitioner has stated that one vote alleged to have been counted for the petitioner did not contain any numerical figure or any Roman form and it contained horizontal line is not in violation of Rule 73 (a) of the Rules. R.W. 2 has given evidence that he accepted the ballot paper which contained a horizontal line, because the voter might have put that horizontal mark holding the ballot paper containing names vertically. Further, he has stated that he did not find any defect in the ballot paper. Therefore, he accepted it. The intention of the voter was clear from the mark put on the ballot paper. In the election there was only one candidate to be elected and the voter had put one mark. There is no cross-examination by the 2nd respondent on the evidence given by R.W. 2. Therefore, the evidence of R.W. 2 that the horizontal mark in one of the disputed ballot paper must be held to be in conformity with Rule 73(2) (a) of the Rules and, therefore, the said vote is a valid vote and it is not liable to be excluded from the total number of votes polled by the member. This issue is held accordingly.

137. Now we are left with the 5th issue, which reads thus:—

"Was the Notice given by respondent-2 of his intention to give evidence by way of recrimination, within or beyond the time prescribed by the proviso to sub-section (1) of section 97 of the Representation of People Act, 1951."

Section 97 (1) of the R.P. Act of 1951 provides that in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate (and a petition had been presented calling in question his election). The proviso says that the returned candidate or such other party shall not be entitled to give such evidence unless he has within fourteen